A TREATISE OF The Principal Grounds and Maxims OF THE LAWS OF *This Nation.*

Very useful and commodious for all Students, and such others as desire the knowledge and understanding of the Laws.

Written by that most excellent and Learned Expositor of the Law, W. Noy, *of Lincolns Inn, Esquire.*

Lex plus laudatur quando ratione probatur.

The Fourth Edition.

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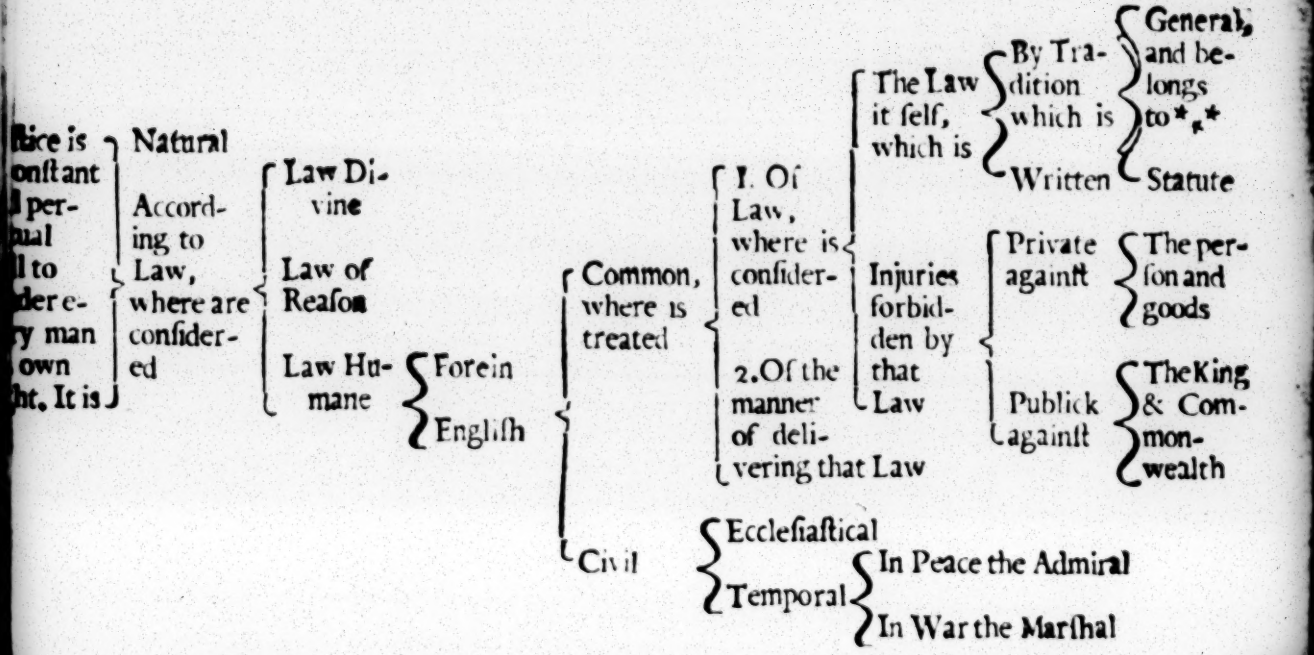
AN
ANALYSIS
OF THE
LAWS of *England*.

By the Honourable and moſt Learned, *WILLIAM NOY*, Eſq; Attorney General, and of the Privy Council to King *Charles* I.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Real
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Secondary
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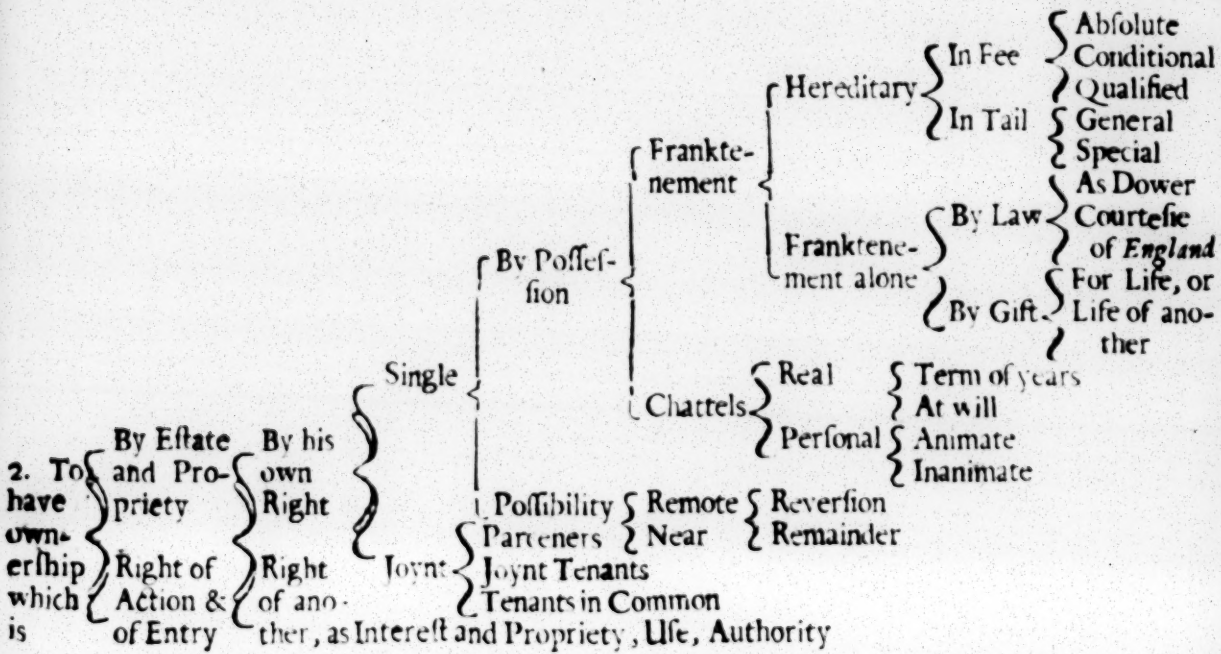
2. To have ownership which is
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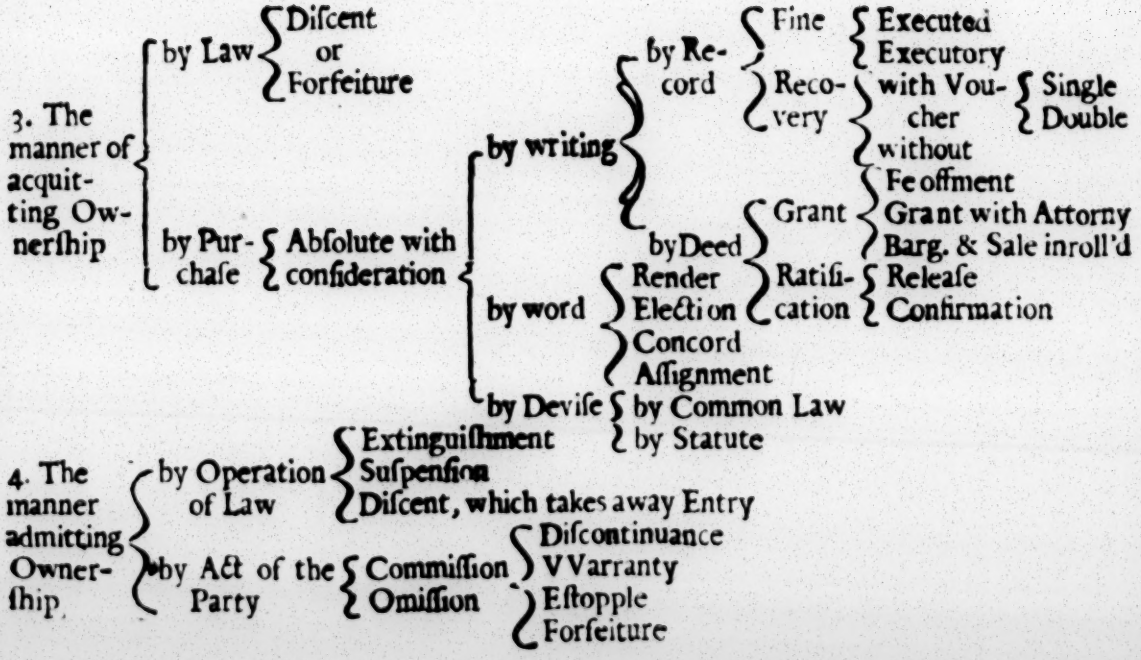
3. The manner of acquitting Ownership
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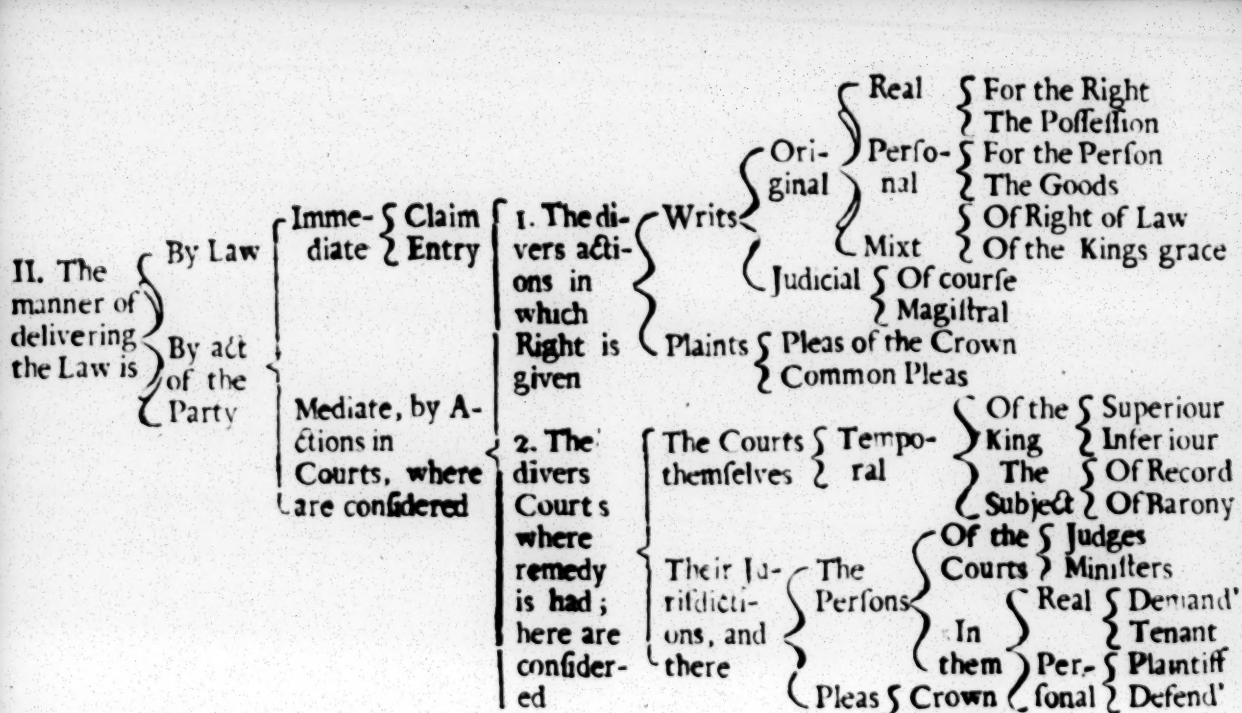
II. The manner of delivering the Law is
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- 5. The manner of taking away the Punilhment
  - Flight
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The Laws of England *are threefold, Common Laws, Customs, and Statutes.*

CHAP. I.
The COMMON LAW.

THE Common Law is grounded on the Rules of Reaſon, and therefore we uſe to ſay in Argument, That Reaſon will that ſuch a thing be done, or that Reaſon will not that ſuch a thing be done. The Rules of Reaſon are of two ſorts, ſome taken from Learning as well Divine as Human, and ſome proper to it ſelf onely.

Of THEOLOGY.

1.

Summa ratio eſt quæ pro Religione facit.

A Tenure to find a Preacher, if the Lord purchaſe parcel of the Land, yet the whole ſervice remaineth, becauſe it is for the ad-advancement of Religion.

2.

Dies Dominicus non est Juridicus.

Sale on a Sunday ſhall not be ſaid Sale in a market, to alter the property of the Goods.

Of GRAMMAR.

Of Grammar the Rules are infinite in the Etymology of a Word, and in the conſtruction thereof what is nature is ſingle.

3.

Ad proximum antecedens fiat relatio, niſi impediatur ſententia.

As an Indictment againſt *J. S.* ſervant to *J. D.* in the County of *Midd.* Butcher, &c. is not good; for Servant is no addition, and Butcher ſhall be referred to *J. D.* which is the next antecedent.

Of LOGICK.

4.

Ceſſante cauſa ceſſat effectus.

The Executor, nor the husband, after the death of a woman guardian in Soccage, ſhall not have the wardſhip, becauſe (*viz.*) the natural affection is removed which was the cauſe thereof.

Some

Some things ſhall be conſtrued according to the original cauſe thereof.

5.

The Executor may releaſe before the Probate of the Will, becauſe his title and intereſt is by the Will, and not by the Probate.

To make a man ſwear to bring me money upon pain of killing, and he bringeth it accordingly, is Felony.

Outlawry in Treſpaſs is no forfeiture of Land, as Outlawry in Felony is; for although the non appearance is the cauſe of the Outlawry in both, yet the force of the Outlawry ſhall be eſteemed according to the heinouſneſs of the offence, which is the principal cauſe of the Proceſs.

6.

According to the beginning thereof.

As if a Servant which is out of his Maſters ſervice, kill his Maſter, through the malice which he bare him when he was his Servant, this is Petty Treaſon.

7.

According to the end thereof.

As if a man warned to anſwer a matter in a Writ, there he ſhall not anſwer to any other matter then is contained in the Writ, for that was the end of his coming.

8.

Derivativa poteſtas non poteſt eſſe major primitivâ.

A Servant ſhall be ſtopped to ſay the Franktenement is belonging to his Maſter, by a Recovery againſt his Maſter, although the Servant be a ſtranger to the Recovery; for he ſhall not be in a better caſe then he is in, whoſe Right he claimeth or juſtifieth.

9.

Quod ab initio non valet, in tractu temporis non convaleſcit

If an Infant or a Maried woman do make a Will, and publiſh the ſame, and afterwards dieth, being of full age or ſole, notwithſtanding this Will is void.

10.

Unumquodque diſſolvitur eo modo quo colligatur.

An Obligation or other matter in writing may not be diſcharged by an Agreement by word, but by writing.

11.

He that claimeth a thing on high,
Shall neither have gain nor loſs thereby.

As if one Joynt Tenant make a Leaſe of his Joyntee, reſerving rent, and die; the Heir which ſurviveth ſhall have the Reverſion

on of his Joyntee, but not the rent, becauſe he cometh in by the firſt Feoffor, and not under his companion.

Alſo where the Husband being leaſed for years in right, reſerving a rent, the woman ſhall have the reſidue of the term, but not the rent.

12.

Debile fundamentum fallit opus.

When the Eſtate whereunto the Warranty is annexed is defeated, the Warranty is alſo defeated.

13.

Incidents may not be ſevered.

As if a man grant Wood to be burnt in ſuch a houſe, Wood may not be granted away, but he which hath the houſe ſhall have the wood alſo.

14.

Actio perſonalis moritur cum perſona.

As if Battery be done to a man, if he that did the Battery or the other die, the Action is gone.

If the Leſſor covenants to pay Quit Rents during the term, his Executor ſhall not pay it, for it is a perſonal covenant.

15.

Things of higher nature do determine things of lower nature.

As matters of writing do determine an agreement by words.

If an offence, which is Murder at the Common Law, be made High Treason, no Appeal lieth for it, for that the Murder is drowned and punishable as Treason, whereof no Appeal lieth.

16.

Majus continet minus.

Where by the Custom of a Manor a man may demise for Life, he may demise to his Wife *durante viduitate*.

17.

Majus dignum trahit ad se minus dignum.

As the Writings, the Chest or Box they are in.

Of PHILOSOPHY.

18.

Naturæ vis maxima.

Natural Affection or Brotherly Love are good causes or considerations to raise an Use.

And one Brother may maintain a Suit for another.

19.

The Law favoureth some persons, viz.

Men out of the Realm or in Prison, Women

men married, Infants, Ideots, Madmen, Men without intelligence, Strangers, that are neither parties nor privy, and things done in anothers right.

A Descent shall not take away the Entry of a man out of the Realm, or in Prison, or of a married woman, or of an Infant.

And a Lease made to the Husband and Wife after the death of the Husband, the Wife shall not be charged for Waste during the Marriage.

An Ideot shall not be compelled to plead by his Guardian or next Friend, but shall be in the Court; and he that pleadeth the best plea for himself shall be admitted.

If a dumb man bring an Action he shall plead by his next friend.

If a Lessee for years grant a Rent-charge, and surrendereth, the Rent shall be paid during the term to the Stranger.

A man outlawed or excommunicated may bring an Action as an Executor.

20.

And a mans Person before his Possessions.

Mentioned of corporal pain, shall avoid a Deed, but not his Goods.

21.

And matter of possession more then matter of right, when the right is equal.

As if a man purchaſe ſeveral Lands at one time, held of ſeveral Lords by Knights Service, and dieth, the Lord which firſt ſeizeth the Ward ſhall have it, otherwiſe the elder Lord.

22.

Matter of profit or intereſt ſhall be taken largely: and it may be aſſigned, and it may not be countermanded: but matter of pleaſure, truſt, or authority, ſhall be taken ſtrictly, and may be countermanded.

As licence to him in my Park or in my Garden to walk, extendeth only to himſelf, and not to his Servant, nor any other in his company, for it is matter of pleaſure onely. Otherwiſe it is of a licence to hunt, kill, and carry away the Deer, which is matter of profit.

A Church way is matter of eaſe.

Of POLITICAL.

23.

Nothing ſhall be void which by poſſibility may be made good. If Land be given to a man, and to a woman maried to another man, and the Heirs of their two bodies, this is a preſent Eſtate Tail, becauſe of the poſſibility.

24.

Ex nudo pacto non oritur actio.

No man is bound to his promiſe; nor any Uſe can be raiſed without good conſideration.

A conſideration muſt be ſome cauſe or occaſion which muſt amount to a recompence in Deed or in Law, as Money or Natural Affection, not long Acquaintance nor great Familiarity.

25.

The Law favoureth a thing that is of neceſſity.

As to pay ſeveral Expences ſhall not be ſaid to adminiſter, to diſtrain in the night Damage feaſant, to kill another to ſave his own life.

A Servant to beat another to ſave his Maſter, if he cannot otherwiſe chuſe.

To drive another mans cattel amongſt mine own, untill I come to a place to ſhut them, is no Treſpaſs.

26.

And for the good of the Commonwealth.

As killing of Foxes, and the pulling down of an houſe of neceſſity to ſtay a Fire.

27.

Communis error facit jus.

As an Acquittance made by the Maior alone, where there be an hundred prefidents, is good.

28.

And things that are in the cuſtody of the Law.

Goods taken by Diſtreſs ſhall not be taken in Execution for the debt of the owner thereof.

29.

The Husband and Wife are one perſon.

They cannot ſue one another, nor make any Grant one to another. And if a woman marry with her Obligor, the debt is extinct, and ſhe ſhall never have any Action if another were bound with him, for by the Mariage the Action is ſuſpended, and an Action Perſonal ſuſpended againſt one is a diſcharge to all.

30.

An Obligation with a Condition to enfeoff a woman before ſuch a day, and before the day the Obligor taketh her to wife, the Obligation is forfeited becauſe he cannot enfeoff her, but he may make a Leaſe for years with a remainder to his wife.

When a joynt Purchaſe is during the Mariage, every one ſhall have the whole.

When a joynt Purchaſe during the Mariage is made, and the Husband ſell, the Wife ſhall have a *Cui in vita* for the whole againſt both, and on a Feoffment made to one man and

and his Wife, and to a third perſon, the third perſon ſhall have one moiety.

31.

All that a Woman hath appertaineth to her Husband.

Perſonal things and things abſolutely real, as Lands, Rents, &c. or Chattels real, and things in Action, are onely in her right; notwithſtanding real things and things in Action he may diſpoſe at pleaſure, but not will nor charge them: and he ſhall have her real Chattels if he ſurvive. Of things in Action the woman may diſpoſe by her laſt Will, and ſhe may make her Husband her Executor, and he ſhall recover them to the uſe of the laſt Will of his Wife.

If a Leſſee for years grant his term to a man or woman, and to another, they are joynt Tenants: but if Goods be given to her and to another, her Husband and the other are Tenants in common.

The Husband may releaſe an Obligation or Treſpaſs for Goods taken when his Wife was ſole, and it ſhall be good againſt the woman if he die: but if he die without making any ſuch Releaſe, the woman ſhall have the Action, and not the Executor of her Husband.

The

The woman ſurviving ſhall have all things in Action, or her Executors if ſhe die.

The Husband ſhall be charged with the Debts of his Wife but during her life.

32.

The will of the Wife is ſubject to the will of her Husband.

Note, a Feoffment made to the Wife, ſhe ſhall have nothing if her Husband do not thereunto agree.

MORAL RULES.

33.

The Law favoureth works of charity, right, and truth, and abhorreth fraud, covin, and incertainties, which obſcure the Truth; contrarieties, delays, unneceſſary circumſtances, and ſuch like.

34.

Dolus & fraus una in parte ſanari debent.

No man ſhall take benefit of his own wrong If a man be bound to appear at a day, and before the day the Obligee caſts him in priſon, the Bond is void.

A Grant of all his Woods in *B* Acre which may be reaſonably ſpared, is a void Grant, if it be not reſerved to a third perſon to appoint what may be ſpared.

A Feoffment made in Fee of two Acres to two men, *Habend'* one Acre to one, and the other Acre to the other; this *Habend'* is void.

35.

Lex neminem cogit ad impossibilia, &c.

The Law compelleth no man to shew that which by intendment he doth not know: as if a Servant be bound to serve his Master in all his commandments lawful, it is a good plea to say, he served him lawfully.

A covenant to make a new Lease upon the Surrender of the old Lease, and after the covenanter doth make a Lease by Fine for more years to estrange, the covenant is broken, although the Lessee did not surrender, the which by the words ought to be the first Act, for that the other had disabled to take or to make.

LAW CONSTRUCTIONS.

The Law expoundeth things with equity and moderation, to moderate the strictness. It is no Trespass to beat his Apprentice with a reasonable correction, or to go with a woman to a Justice of Peace, to have the Peace of her Husband against the will of her Husband, which equity doth restrain the generality, if there be any mischief or inconvenience

venience in it: As if a man make a Feoffment of his Lands in, and with Common, in all his Lands in *C*, the Common ſhall be intended within his Lands in *C*, and not in his other Lands he ſhall have elſewhere.

36.

Every act ſhall be taken moſt ſtrictly againſt him that made it.

As if two Tenants in common grant a Rent of 10 *s.* this is ſeveral, and the Grantees ſhall have 20 *s.* but if they make a Leaſe, and reſerve 10 *s.* they ſhall have onely 10 *s.* between them.

So an Obligation to pay 10 *s.* at the Feaſt of our Lord God, it is no plea to ſay that he did pay it, but he muſt ſhew at what time, or elſe it will be taken he paid it after the Feaſt.

37.

He that cannot have the effect of the thing ſhall have the thing it ſelf.

Ut res magis valeat quàm pereat.

As if a Termor grant his Term *Habendum immediatè poſt mortem ſuam*, the Grantee ſhall have it preſently.

38.

When many joyn in one Act, the Law ſaith it is the Act of him that could beſt do it, and that thing ſhould be done by thoſe of the beſt skill.

As

As the Diſſeizee and the Heir of the Diſſeizor, who is by diſcent, joyn in a Feoffment, this ſhall be the Feoffment of the Heir onely, and the Confirmation of the Diſſeizee.

And the Merchant ſhall weigh the wares, and not the Collectors.

39.

When two Titles concur, the elder ſhall be preferred.

40.

By an Acquittance for the laſt Payment all other Arrearages are diſcharged.

41.

One thing ſhall enure for another.

If the Leſſor enſeoff the Leſſee for Life, it ſhall be taken for a Confirmation.

42.

In one thing all things following ſhall be concluded, ingranting, demanding, or prohibiting.

If one accept a Cloſe or Wood, the Law will give him a way to it.

43.

A man cannot qualifie his own Act.

As to releaſe an Obligation untill ſuch a time.

44.

The Conſtruction of the Law may be alter-

ed

by the ſpecial agreement of the parties.

If a houſe be blown down with the wind the Leſſee is excuſed in Waſte; but if he have covenanted to repair it, there an Action of Covenant doth lie by the agreement of the parties.

45.

The Law regardeth the intent of the parties, and will imply their words thereunto; and that which is taken by common intendment ſhall be taken to be the intent of the parties: and common intendment is not ſuch an intendment as doth ſtand indifferent, but ſuch an intent as hath the moſt vehement preſumption. All incertainty may be known by circumſtances, every Deed being done to ſome purpoſe, reaſon would that it ſhould be conſtrued to ſome purpoſe; and variance ſhall be taken moſt beneficial for him to whom it is made, and at election.

46.

An intendment of the parties ſhall be ordered according to the Law.

If a man make a Leaſe to a man and to his Heirs for ten years, intending his Heirs ſhall have it if he die, notwithſtanding the intent the Executors ſhall have it.

47.

Qui per alium facit, per ſeipſum facere videtur.

A promiſe made to the Wife in conſideration of a thing to be performed by her Husband, if he agree and perform the conſideration, in an Action of the Caſe he ſhall declare the Aſſumption was made to him.

And if my Servant ſell my Goods to another in Debt, I ſhall ſuppoſe he bought them of me.

CUSTOMS.

Conſuetudo eſt altera lex.

Cuſtoms are of two ſorts, General Cuſtoms in uſe throughout the whole Realm, called Maxims; and Particular Cuſtoms uſed in ſome certain County, City, Town, or Lordſhip, whereof ſome have been ſpecified before, and ſome follow here, and where occaſion is offered.

GENERAL CUSTOMS.

The Kings Excellency is ſo high in the Law, that no Freehold may be given to him, nor derived from him, but by matter of Record.

Every Maxim is a ſufficient Authority to it ſelf; and which is a Maxim, and which is not, ſhall always be determined by the Judges,

venience in it: As if a man make a Feoffment of his Lands in, and with Common, in all his Lands in *C*, the Common ſhall be intended within his Lands in *C*, and not in his other Lands he ſhall have elſewhere.

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If a houſe be blown down with the wind the Leſſee is excuſed in Waſte; but if he have covenanted to repair it, there an Action of Covenant doth lie by the agreement of the parties.

45.

The Law regardeth the intent of the parties, and will imply their words thereunto; and that which is taken by common intendment ſhall be taken to be the intent of the parties: and common intendment is not ſuch an intendment as doth ſtand indifferent, but ſuch an intent as hath the moſt vehement preſumption. All incertainty may be known by circumſtances, every Deed being done to ſome purpoſe, reaſon would that it ſhould be conſtrued to ſome purpoſe; and variance ſhall be taken moſt beneficial for him to whom it is made, and at election.

46.

An intendment of the parties ſhall be ordered according to the Law.

If a man make a Leaſe to a man and to his Heirs for ten years, intending his Heirs ſhall have it if he die, notwithſtanding the intent the Executors ſhall have it.

47.

Qui per alium facit, per ſeipſum facere videtur.

A promiſe made to the Wife in conſideration of a thing to be performed by her Husband, if he agree and perform the conſideration, in an Action of the Caſe he ſhall declare the Aſſumption was made to him.

And if my Servant ſell my Goods to another in Debt, I ſhall ſuppoſe he bought them of me.

CUSTOMS.

Conſuetudo eſt altera lex.

Cuſtoms are of two ſorts, General Cuſtoms in uſe throughout the whole Realm, called Maxims; and Particular Cuſtoms uſed in ſome certain County, City, Town, or Lordſhip, whereof ſome have been ſpecified before, and ſome follow here, and where occaſion is offered.

GENERAL CUSTOMS.

The Kings Excellency is ſo high in the Law, that no Freehold may be given to him, nor derived from him, but by matter of Record.

Every Maxim is a ſufficient Authority to it ſelf; and which is a Maxim, and which is not, ſhall always be determined by the Judges,

Judges, becauſe they are known to none but to the Learned.

A Maxim ſhall be taken ſtrict.

A particular Cuſtom, except the ſame be a Record in ſome Court, ſhall be pleaded and tried by 12 men.

CHAP. II.
STATUTES.

THE laſt ground of the Laws of *England* ſtandeth in divers Statutes made by our Sovereign Lord the King and his Progenitors, and by the Lords Spiritual and Temporal, and the Commons, in divers Parliaments, in ſuch caſes where the former Laws ſeemed not ſufficient to puniſh evil men, and to reward the good.

Of general Statutes the Judges will take notice if they be not pleaded, but not of ſpecial or particular.

All Acts of Parliament, as well private as general, ſhall be taken by reaſonable conſtruction, be collected out of the words of the Act onely, according to the true intention and meaning of the maker.

Four

Four Leſſons to be obſerved where contrary Laws come in queſtion.

1. The inferiour Law muſt give place to the ſuperiour.

2. The Law general muſt yield to the Law ſpecial.

3. Mans Laws to Gods Laws.

4. An old Law to a new Law.

And oftentimes all theſe Laws muſt be joyned together to help a man to his right; as if a man diſſeized, and the Diſſeizor made a Feoffment to defraud the Plaintiff; in this caſe it appears, that the ſaid unlawful Entry is prohibited by the Law of Reaſon.

But the Plaintiff ſhall recover the double Damage, and that is by the Statute of 8 *H.* 6. And that the Damage ſhall be ſeſſed by 12 men, that is, by the Cuſtom of the Realm; and ſo in ſome caſes theſe three Laws do maintain the Plaintiffs right.

And theſe Laws concern either mens Poſſeſſions or the Puniſhment of Offences.

And ſo much ſhall be ſufficient to be ſaid touching Common Law, Cuſtoms, and Statutes.

Con-

How Lands shall discend.

Inheritance is an Estate which doth discend: it may not lineally ascend from the Son which purchaseth in Fee, and dieth, to his Father; but discendeth to his Uncle or Brother, and to his Heirs, which is the next of the whole bloud, for the half bloud shall not inherit, but the most worthy of bloud, as of the bloud of the Father before the Mother, of the elder Brother before the other, and born within espousal.

A Discent shall be intended to the Heir of him which was last actually seized; that the Sister of the whole bloud, where the elder Brother did enter after the death of his Father, and not his Brother of the half bloud, nor any other collateral Cousin shall inherit; yet notwithstanding such a one is Heir to a common Ancestor: in which Rule every word is to be observed, and so in every Maxim, if the Land, Rent, Advowson, or such like to discend to the elder Son, and he die before any Entry or receipt of the Rent, or presentment to the Church, the younger Son shall have and inherit: and the reason is, because that in all Inheritances in possession he which claimeth title thereunto as Heir ought to make him-

himſelf Heir to him that was laſt actually ſeized.

Here the Poſſeſſion of the Leſſee for years or of the Guardian, ſhall inveſt the actual Poſſeſſion and Franktenement in the elder Brother.

But he dying ſeized of a Reverſion, or a Remainder, or an Eſtate for Life or in Tail, there he which claimeth the Reverſion or Remainder as Heir, ought to make himſelf Heir to him that had the Gift or made the Purchaſe.

Feodo excludeth an Eſtate Tail, where the ſecond Son ſhall inherit before the Daughter.

And if the Lands be once ſettled in the bloud of the Father, the Heir of the Mother ſhall never have them, becauſe they are not of the bloud of him that was laſt ſeized.

And to the Heir of the bloud of the firſt Purchaſer:

As if the Father purchaſe Land, and it diſcendeth to the Son, who entereth and dieth without Heirs of the Fathers part, then the Land ſhall diſcend to the Heirs of the Mother or Father of the Father, and not to the Heirs of the Mother of the Son, although they are more near of bloud to him that was laſt ſeized, yet they are not of the bloud of the firſt Purchaſer.

If

Concerning POSSESSIONS.

The difference between Poſſeſſion and Seizin is;

Leaſe for years is poſſeſſed, and yet the Leſſor is ſtill ſeized; and therefore the *Terms of the Law* are, that of Chattels a man is poſſeſſed, whereas in Feoffments, Gifts in Tail, and Leaſes for life, he is called ſeized.

CHAP. III.

Of poſſeſſion of Franktenement.

TEnant in Feeſimple is he which hath Lands or Tenements to hold to him and his Heirs for ever. It is the beſt Inheritance a man may have: he may ſell, or grant, or make his will of thoſe Lands.

And if a man die, they do diſcend to his Heir of the whole bloud.

CHAP.

CHAP. IV.
FEE TAIL.

FEE Tail is of what body he ſhall come that ſhall inherit.

Tenant in tail is ſaid to be in two manners.

Tenant in tail General, and Tenant in tail Special.

General Tail is, where Lands or Tenements be given to a man and his Wife, and to the Heirs of their two bodies, or to his Heirs Males, or to his Heirs Females.

Tenant in Tail is not puniſhable for Waſte.

Tenant in Tail cannot will his Lands, nor bargain, ſell, or grant, but for term of his life, without a Fine or Recovery.

If a man will purchaſe Lands in Fee, it behoveth him to have theſe words *Heirs* in his Purchaſe.

If a man would grant Lands in Tail it behoveth him to appoint what body they ſhall come of.

Yet a Deviſe of Lands to a man and his Heirs Males is a good Intail, and of Lands to a man for ever a good Fee Simple.

How Lands ſhall deſcend.

Inheritance is an Eſtate which doth diſcend: it may not lineally aſcend from the Son which purchaſeth in Fee, and dieth, to his Father; but diſcendeth to his Uncle or Brother, and to his Heirs, which is the next of the whole bloud, for the half bloud ſhall not inherit, but the moſt worthy of bloud, as of the bloud of the Father before the Mother, of the elder Brother before the other, and born within eſpouſal.

A Diſcent ſhall be intended to the Heir of him which was laſt actually ſeized; that the Siſter of the whole bloud, where the elder Brother did enter after the death of his Father, and not his Brother of the half bloud, nor any other collateral Couſin ſhall inherit; yet notwithſtanding ſuch a one is Heir to a common Anceſtor: in which Rule every word is to be obſerved, and ſo in every Maxim, if the Land, Rent, Advowſon, or ſuch like to diſcend to the elder Son, and he die before any Entry or receipt of the Rent, or preſentment to the Church, the younger Son ſhall have and inherit: and the reaſon is, becauſe that in all Inheritances in poſſeſſion he which claimeth title thereunto as Heir ought to make him-

himſelf Heir to him that was laſt actually ſeized.

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If

If the Heirs be Females in equal diſtance, as Daughters, Siſters, Aunts, &c. they ſhall inherit together, and are but one Heir, and are called Parceners.

Gavelkind.

Doth diſcend to all the Sons, and if no Sons to all the Daughters, and may be given by Will by the cuſtom.

CHAP. V.
PARCENERS.

PArceners are of two ſorts, Women and their Heirs by the Common Law, Men by the Cuſtom.

They may have a Writ of Partition, and the Sheriff may go to the Lands, and by the Oaths of 12 men make Partition between them, and the eldeſt ſhall have the Capital Meſuage by the Common Law, and the youngeſt by the Cuſtom. Where the parties will not ſhew to the Jury the certainty, there they ſhall be diſcharged in conſcience, if they make partition of ſo much as is preſumed and known by preſumptions and likelihoods.

Par-

Parceners may by agreement make partition by Deed or by Word, and the eldeſt firſt chuſe, unleſs their agreement be to the contrary.

Every part at the time of Partition muſt be of an even yearly value, without incumbrance.

Rent may be reſerved for equality or partition (and may be diſtrained for) without a Deed.

Parceners by divers Diſcents, before partition being diſſeized, ſhall have one Aſſize.

A Parcener before partition may charge or demiſe her part.

The entry or act of one Copartner or Joynt Tenant ſhall be the act of both, when it is for their good.

If a Parcener after partition be entred, ſhe may enter upon her Siſters part, and hold it with her in Parcenary, and have a new Partition, if ſhe hold none of her part before ſhe was outed, *viz.* in exchange.

CHAP. VI.
JOYNT TENANTS.

JOynt Tenants be ſuch as have Joynt Eſtates in Goods or Land, where he

that ſurviveth ſhall have all without incumbrance, if the Tenements abide in the ſame plight as they were granted.

Joynt Tenants may have ſeveral Eſtates.

A Joynt Tenant cannot grant a Rent charge but for term of his own life.

A Joynt Tenant may make a Leaſe for life or for years of his part, or releaſe, and the Leſſee for years may enter, although the Leſſor die before the Leaſe begin, and his Heir ſhall have the Rent, but the Survivor the Reverſion.

A Joynt Tenant may have a writ of Partition by the Statute of 31 *H.*8.*c.*32. A Partition made by Joynt Tenants, or Tenants in common of Eſtates of Inheritance, muſt be by Indenture, by word 'tis void.

CHAP. VII.
TENANTS IN COMMON.

TEnants in Common are thoſe that hold Lands and Tenements by ſeveral titles.

They may joyn in Action Perſonal, but they muſt have ſeveral Actions Real.

They may have a writ of Partition by the Statute of 31 *H.*8.*c.*32.

If one Parcener, Joynt Tenant, or Tenant in

in Common take, all the others have no remedy but by *Ejectione firme*, or ſuch like, or Waſte.

GAVILKIND LANDS.

Tenant by the courteſie of *Kent*, whether he have iſſue or no, untill he marry, and ſo forth, he may not commit Waſte.

CHAP. VIII.
TENANT IN DOWER.

A Woman ſhall be endowed of all ſorts of Inheritance of her Husband, where the Iſſue that ſhe had by him may inherit as Heir to his Father, by meets and bounds of a third part.

She ſhall have Houſe room, and Meat, and Drink, in common for 40 days: but ſhe may not kill a Bullock within thoſe 40 days after the death of her Husband, in which time her Dower ought to be aſſigned her.

The Aſſignment by him that had the Franktenement is good, but by him that is Guardian in Soccage, or Tenant by *Elegit*, (*Verte Elegit*) or Statute, or Leſſee for years, is not.

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The Aſſignment by him that had the Franktenement is good, but by him that is Guardian in Soccage, or Tenant by *Elegit*, (*Verte Elegit*) or Statute, or Leſſee for years, is not.

She is to demand her Dower on the Land.

She ſhall recover damages when her Husband died ſeized from the death of her Husband, if the Heir be not ready at the firſt day to aſſign her Dower.

She ſhall have all her Chattels real again except her Husband ſell them: he may not charge them or give them by his Will. And likewiſe her Bonds, if the Money were due in the life of her Husband, and all convenient Apparel; but if ſhe have more then is fit for her degree, it will be Aſſets.

A Woman ſhall be barred of her Dower ſo long as ſhe detaineth the body of the Heir being in ward, or the Writing of the Sons Land.

A Woman ſhall not be endowed of any Lands that her Husband joyntly holdeth with another at the time of his death.

Dower of Carilkind Lands.

If the Woman ſhall be endowed of one half ſo long as ſhe is unmaried and chaſte, and it may be held with the Heir in common.

It is of Lands and Tenements, and not of a Fair or ſuch like, where the Heir loſeth not his inheritance, there ſhe loſeth not her Dower.

JOYN-

JOYNTURE.

If a woman have a Joynture before Mariage, ſhe may claim no Dower, 27 *H.*8.

If it be made during Mariage, ſhe may enter into her Joynture preſently.

If ſhe enter or accept of it, ſhe ſhall not be endowed.

If ſhe ſhall be expulſed of any part of her Joynture, ſhe ſhall be endowed of the reſidue of her Husbands Lands.

CHAP. IX.
Tenant for term of Life.

TEnant for term of Life is he that hath Lands or Tenements for term of his Life, or another mans Life, and none of leſſer Eſtate may have a Freehold.

If a Tenant for Life ſow the Lands, and die before the Corn be reaped, his Executor ſhall have it, but not the Graſs nor other fruit.

If a Tenant for Life be impanelled upon an Inqueſt, and forfeit Iſſues and die, they ſhall be levied upon him in the Reverſion: and ſo likewiſe if the Husband on the Lands of the Wife.

CHAP X.

Tenant for term of Years.

TEnant for term of Years is where a man letteth Lands or Tenements to another for certain Years.

He may enter when he will, the death of the Leſſor is no let, and may grant away his term before it begin: but before he enter he cannot ſurrender, nor have any Action of Treſpaſs, nor take a Releaſe.

He is bound to repair the Tenements.

The Leſſor may enter to ſee what Reparations or Waſte there is, and he may diſtrain for his Rent or have an Action of Debt.

If Tenant for life or years granteth a greater Eſtate then he hath himſelf, he doth forfeit his term.

CHAP. XI.

TENANT AT WILL.

TEnant at Will is he that holdeth Lands or Tenements at the Will of another.

The Leſſor may reſerve a yearly Rent, and may diſtrain for it, or have an Action of Debt: the Leſſee is not bound to repair the Tenements. The

The will is determined by the death of the Leſſor, or of a woman Leſſee by her Marriage, or when the Leſſee will take upon him to do that which none but the Leſſor may do lawfully, it determineth the will and poſſeſſion, and the Leſſor may have an Action of Treſpaſs for it.

The Leſſee ſhall have reaſonable time to have away his Goods and his Corn; but he ſhall loſe his Fallow and his Dung carried forth.

CHAP. XII.
REMAINDER.

A Remainder is the reſidue of an Eſtate at the ſame time appointed over, and muſt be grounded upon ſome particular Eſtate given before, granted for years, or life, and ſo forth.

And ought to begin in Poſſeſſion, when the particular Eſtate endeth: there may be no mean time between either by Grant or Will.

No Remainder can be of a Chattel Perſonal: a Remainder cannot depend on a matter *ex poſt facto*, as upon Eſtate Tail, upon condition that if the Tenant in Tail ſell, then

the Land to remain to another, is a void Remainder.

CHAP. XIII.
REVERSION.

A Reverſion is the reſidue of an Eſtate that is left after ſome particular Eſtate granted out in the Grantor: as if a man grant Lands for Life, without further granting, the Reverſion of the Fee Simple is in the Leſſor.

CHAP. XIV.
WASTE.

WAſte lieth againſt a Tenant by the courteſie, for life, for years, or in dower, and they ſhall loſe the place waſted, and treble damages.

Waſte lieth not againſt a Tenant by *Elegit*, Statute Merchant or Staple, but Account after the debt or damage levied.

Waſte or Account will lie againſt a Tenant in Mortgage, becauſe he had Fee conditional.

Waſte is not given to the Heir for Waſte in the life of his Father.

Waſte is given againſt tho Aſſign of the Tenant for life, or of anothers life, but not againſt the Aſſignee of a Tenant in dower, or of the courteſie, it is to be brought againſt themſelves.

It is Waſte to pull up the Forms, Benches, Doors, Windows, Walls, Filberd trees, or Willows planted.

CHAP. XV.
DISCONTINUANCE.

DIſcontinuance is where a man that hath the preſent poſſeſſion by making a larger Eſtate then he may, diveſteth the Inheritance of the Lands or Tenements out of another, and dieth, and the other hath right to have them, but he may not enter becauſe of ſuch alienation, but is put to his Writ.

If a man ſeized in the right of his Wife, or if a Tenant in Tail, made a Feoffment, and died, the Wife might not enter, nor the Iſſue in Tail, nor he in Reverſion, but are put to their Action.

Now the wife may enter by the Statute 32 *H.* 8. and a Recovery ſuffered by the Tenant by courteſie, or by the Tenant after the poſſibility of Iſſue extinct, or for term of life is now made no Diſcontinuance.

Such things that paſs by way of a Grant by Deed without Livery and Seizin, cannot be diſcontinued as a Reverſion, or Rent-charge, Common, &c.

A Releaſe or Confirmation without warranty maketh no Diſcontinuance.

CHAP. XVI.
DISCENTS.

Diſcents which take away Entries is where a man diſſeiſeth another and dieth, and his Heir entreth, or maketh a Feoffment to another in Fee or in Tail, and he dieth, and his Heir entreth, theſe Diſcents put a man from his Entry.

A Diſcent during Minority, Mariage, *non ſanæ mentis*, Impriſonment, or being out of the Realm, do not take away an Entry.

Diſcents of Rents in groſs, the Lord notwithſtanding may diſtrain.

A Dying ſeizee of a term for life, or of a Remainder or Reverſion, doth not take away an

an Entry: he muſt die ſeized in Fee and Franktenement.

A Diſſeiſin cannot be to one Joynt Tenant or Parcener alone, if it be not to the other.

If a condition be broken after a Diſcent, the Donor, Feoffor, or his Heirs may enter.

A wrongful Diſſeiſin is no Diſcent, unleſs the Diſſeiſor have quiet poſſeſſion five years without entry or claim. 32 *H.* 8.

CHAP. XVII.
CONTINUAL CLAIM.

COntinual Claim is a demand made by another of the property or poſſeſſion of a thing which he hath not in poſſeſſion, but is withholden from him wrongfully; deſeateth a Diſcent hapning within a year and a day after it is made, and now by the Statute within five years.

CHAP. XVIII.
REMITTER.

REmitter is when by a new title the Franktenement is caſt upon a man, whoſe Entry was taken away by a Diſcent

or

or Diſcontinuance, he ſhall be in by the elder title: as if Tenant in Tail diſcontinue the Tail, and if after diſſeiſeth his Continuance, and dieth thereof ſeized, and the Land diſcend to his Iſſue, in that caſe he is ſaid to be in his Remitter, *viz.* ſeized his ancient Eſtate Tail.

When the Entry of a man is lawful, and he taketh an Eſtate to himſelf when he is of full age, if it be not by Deed indented, or matter of Record which ſhall eſtop him, it ſhall be to him a good Remitter.

A Remitter to the Tenant ſhall be a Remitter to him in the Remainder and Reverſion.

CHAP. XIX.
TENURES.

ALL Lands are holden of the King immediately, or of ſome other perſon; and therefore when any that hath Fee dieth without Heir, the Lands ſhall eſcheat to the Lord.

And they are holden for the moſt part either by Knights Service or in Soccage.

Knights Service draweth to it Ward, Mariage and Relief, *viz.*

Of Ward, Mariages, and Relief.

The Heir Male unmaried ſhall be in ward untill 21 years of age.

If he be maried in the life of his Anceſtors, yet the Lord ſhall have the profit of the Land till his full age.

None ſhall be in ward during the life of the Father.

If the Heir refuſe a convenient Mariage, he ſhall pay to the Lord the value when he cometh to full age.

If the Ward marry againſt the will of the Guardian, he ſhall pay him the double value of his Mariage: but if the Heir be of the full age aforeſaid, he ſhall pay a Relief.

A Relief for a whole Knights Fee is 5 *l.* for half a Knights Fee 50 *s.* for a quarter 25 *s.* for more, more; for leſs, leſs, accordingly.

A Relief is no Service, but is incident to a Service, the Guardian muſt not commit waſte, *viz.* Chattels.

Tenure in Soccage.

Tenure in Soccage is where the Tenant holdeth of his Lord by Fealty, Suit of Court, and certain Rent for all manner of Service.

The

The Lord ſhall not have the Wardſhip, but a Relief preſently after the death of his Tenant.

A Relief for Soccage land is a years rent, and is to be paid preſently upon a Diſcent or Purchaſe As if the land were held by Fealty, and 10 *s.* rent *per an.* 10 *s.* ſhall be paid for Relief.

The next of the kin to whom the Inheritance may not diſcend, ſhall have the wardſhip of the land and of the Heir, untill his age of 14 years, to the uſe of the Heir, at which age the Heir may call him to account.

If the Guardian die, the Heir cannot have an Action of Account againſt the Executor of the Guardian.

The Executor of the Guardian may not have the Wardſhip, but ſome other of the next of kin. The Husband may not alien the Intereſt of the Wife in the Guardianſhip, nor hold it; if ſhe die it may not be ſold.

If another man occupy the lands of the Heir as Warden in Soccage, the Heir may call him to account as Guardian.

If the Guardian hold the lands after the Heir is 14, the Heir ſhall call him to account as his Bailiff.

Gavilkind.

The next of kin ſhall have the Guardianſhip of the body and lands, until the Heir be 15 years of age.

Diverſities of Ages.

A Man hath but two ages.

The full age of Male and Female is One and twenty.

A Woman hath ſix Ages.

The Lord her Father may diſtrain for Aid for her Mariage when ſhe is ſeven.

She is double at nine.

She is able to aſſent to Matrimony at twelve.

She ſhall not be in ward if ſhe be fourteen.

She ſhall go out of ward at ſixteen.

She may ſell or give her Lands at one and twenty.

No man may be ſworn in any Jury before he be 21; before which age all Gifts, Grants or Deeds, as do not effect by delivery of his own hands are void, and all others voidable, except for neceſſary meat, drink, and apparel, &c.

An

An Infant may do any thing for his own advantage as to be Executor, or ſuch like. An infant ſhall ſue by his next Friend, and anſwer by his Guardian.

GAVILKIND.

The Heir may give or ſell at fifteen years of age.

1. The Land muſt diſcend, not be given him by Will.

2. He muſt have full recompence.

3. It muſt be by Feoffment, and Livery of Seiſin with his own hands, not by Warrant of Attorney, or any other Conveyance.

By the Civil Law an Infant may be an Executor at 17 years of age.

An Infant may make a Will of his Goods at 14 years of age, and a Maid at 12.

CHAP. XXI.

RENTS.

THere are three manners of Rents, Rent-ſervice, Rent-charge, Rent-ſeck.

Rent-ſervice is where a man holdeth his Lands of his Lord by certain Rent, &c.

Rent-charge is granted or reſerved out of certain lands by deed with a clauſe of diſtreſs.

Rent-ſeck is a Rent granted without a diſtreſs: or Rent ſervice, ſevered from other ſervice, becometh a Rent ſeck. The

The Reverſion of a Rent without a Deed is void, if the Reverſion be not in the Reſervor. If a Rent be granted from the Reverſion, it is a Rent-ſeck.

He which is not ſeized of a Rent ſeck, is without remedy for the ſame.

The gift of a Peny by the Tenant in name of Seizin of a Rent-ſeck, is a good poſſeſſion and Seiſin.

No Rent may be reſerved upon any Feoffment, Gift, or Leaſe, but onely to the Donor and his Heirs, not to any ſtranger.

A Rent-charge is extinct by the Grantees purchaſe of parcel of the Land, but by the purchaſe of any of his Anceſtors it ſhall not, it ſhall be apportioned like Rent-ſervice, according to value of the Land; but if the whole Land diſcend of the ſame Inheritance, the Rent is extinguiſhed.

By the grant of the Reverſion the Rents and Services paſs. If Rent be granted to a man without more, ſaying, he ſhall have it for term of his life. If the Lord accept of Rent or Service of the Feoffment, he excludeth himſelf of the arrerages of the time of the Feoffment.

For a Rent-charge behind one may have an Action of Annuity, or diſtrain.

DISTRESS.

For what, when, and where a man may diſtrain.

A man may diſtrain for a Rent charge, Rent ſervice, Heriot-ſervice, and all manner of ſervice, as Homage, Eſcuage, Fealty, Suit of Court, and Relief, &c.

Heriot cuſtom muſt be ſeized: and for Amerciaments in a Leet, upon whoſe ground ſoever it be in the Liberty. A man may not diſtrain for Rent after the Leaſe is ended, nor have Debt upon a Leaſe for life, before the Eſtate of Frank-tenement be determined.

A man may not diſtrain in the night but for Damage feaſant.

A man may not diſtrain upon the Poſſeſſions of the King, but the King may diſtrain of any Lands of his Grantee or Patentee.

A man may not diſtrain the Beaſts of a ſtranger that come by eſcape, untill they have been Levant and Couchant on the Ground, but for Damage feaſant.

A man may not diſtrain the Oxen of the Plough, nor a Milſtone, nor ſuch like, that is for the good of the Commonwealth, nor a Cloke in a Tailors Shop, nor Victuals, nor Corn in Sheafs, but if it be in a Cart, for Damage feaſant.

A Diſtreſs muſt be always of ſuch things as the Sheriff may make a Replevin.

A man may not ſever Horſes joyned together, or to a Cart.

If

If a man put cattel into a paſture for a week, and afterwards *J.N.* doth give him notice that he will keep them no longer, and the Owner will not fetch them away, *J.N.* may diſtrain them Damage feaſant.

If a man take Beaſts Damage feaſant, and driving them by the high way to a Pound, the Beaſts enter into the houſe of the Owner, and the taker prayeth the delivery of them, and the Owner will not deliver them, a Writ of Reſcous lieth.

If a man diſtrain Goods he may put them where he will: but if they periſh he ſhall anſwer for them.

If cattel, they ought to be put into a common Pound, or elſe in an open place where the Owner may lawfully come and feed them, and notice given to him thereof, and then if they die it is in default of the Owner.

Cattel taken Damage feaſant may be impounded in the ſame Land; but goods or cattel taken for others things may not.

Sheep may not be diſtrained if there be a ſufficient Diſtreſs beſides.

No man ſhall drive a Diſtreſs out of the County wherein it was taken.

No Diſtreſs ſhall be driven forth of the Hundred, but to a Pound Overt within three miles.

A Diſtreſs may not be impounded in ſeveral places, upon pain of 5 *l.* and treble damage.

Fees for impounding one whole Diſtreſs 4 *d.*

The Executor or Adminiſtrator of him which had Rent or Fee-farm in Fee, in Fee Tail, or for life, may have Debt againſt the Tenant that ſhould pay it, or diſtrain; and this is by the Stat. 32 *H.*8.

So may the Husband after the death of his Wife, his Executor or Adminiſtrator. So may he which hath Rent for another mans life, diſtrain for the arrearages after his death, or have an Action of Debt, 32 *H.*8.

But if the Landlord will diſtrain the goods or cattel of his Tenant, and do ſell them, or work them, or convert them to his own uſe, he ſhall be Executor of his own wrong.

CHAP. XXIII.
DISSEISIN OF RENTS.

THree cauſes of Diſſeizin of Rent-ſervice, Reſcous, Replevin, Incloſure.

Four

Four of Rent-charge, Denyer, and Incloſure. Forſtalling is a Diſſeizin of all.

Foreſtalling is when the Tenant doth with force and arms waylay or threaten in ſuch manner, that the Lord dareth not diſtrain or demand the Rent.

Denial is, if there be no Diſtreſs on the Land, or if there be none ready to pay the Rent, &c.

And of ſuch Diſſeizins a man may have an Action of Novel Diſſeizin againſt the Tenant, and recover his Rent and arrearages, and his damage and coſts: and if the Rent be behind another time, he ſhall have a Rediſſeizin, and recover double damage.

Reſcous and Pound-breach.

If the Lord diſtrain when there is no Rent nor Service behind, the Tenant may not reſcue: otherwiſe if another diſtrain wrongfully; but no man may break the Pound, although he did tender Amends before the cattel were impounded.

If the Lord come to diſtrain, and ſee the Beaſts, and the Servant drive them out of his Fee, the Lord may not have Reſcous, becauſe he had not the poſſeſſion, but he may follow them and diſtrain, but not damage feaſant.

CHAP.

CHAP. XXIV.
COMMON.

COmmon is the right that a man hath to put his Beasts to pasture, or to use and occupy Ground that is another mans.

There be divers Commons, viz. Common in gross, Common appendant, Common appertinant, Common because of Neighbourhood. *Vide Terms of Law.*

The Lords of Wastes, Woods, and Pastures, may approve against their Tenants and Neighbours with Common appertinant, leaving them sufficient Common and Pasture to their Tenants.

As if one Tenant surcharge the Common, the other Tenants may have against him a Writ *De admensuratione pasturæ*, but not against him that hath Common for Beasts without number; neither may the Lord enclose from such Tenants, if he do, the Tenant may bring an Assize against him, and recover treble Damage; but the Lord may have a *Quo jure*, and make the Tenant shew by what title he claimeth.

CHAP.

CHAP. XXV.
WAY.

THE Kings High Way is that which leadeth from Village to Village.

A common High Way is that which leadeth from a Village into the Fields.

A Private Way is that which leadeth from one certain place unto another. 3 *Ed.* 3.

In the Kings High Way the King hath only paſſage for himſelf and his People; and the Franktenement and all the Profits are in the Lord of the Soyl, as they be preſented at the Leet.

Of a common High Way the Franktenement and the Profits are to him that hath the Land next thereto adjoyning; and if it be ſtopped, and I be damnified by it, I have no remedy but by Preſentment in the Leet.

If a Private Way be ſtraitned, or if a Bridge there which another ought to repair, be decayed, an Action of the caſe lieth; but if the Way be ſtopped, an Aſſize of Nuſance lieth, and the Leſſee may have it after the Leſſors years begin or the Leſſee may have an Action of the caſe. If the moſt part of a Water Way be ſtopped, an Aſſize will lie.

CHAP.

CHAP. XXVI.
LIBERTIES.

A Liberty is a Royal Privilege in the hands of a Subject.

All Liberties are derived from the Crown, and therefore are extinguiſhed if they come to the Crown again by Eſcheat, Forfeiture, or ſuch like; for the greater doth drown the leſſer.

One may have a Park, a Leet, Waif, Stray, Wreck of Sea, and *Tenura placitorum*, by Preſcription, and without allowance in Eyre; but not Cognizance of Plea, nor *Catalla felonum vel fugitivorum aut utlagatorum.*

A Liberty may be forfeited by miſuſing, as to keep a Market otherwiſe then it is granted.

A Liberty mry be forfeited for not uſing, when it is for the good of the Commonwealth; as not to exerciſe the Office of the Clerk of the Market, but not to uſe a Market is not.

Whatſoever is in the King by reaſon of his Prerogative, may not be granted or pardoned by general words, but by ſpecial.

CHAP.

CHAP. XXVII.
Of Chattels Real.

CHattels Real are Guardianſhips, Leaſes for years, or at will, &c.

Guardian hip is a commodity of having the cuſtody of the Body or Lands, or both, where the Heir is within age: and the Lord of whom the Land is holden by Knight Service ſhall have the ſame to his own uſe, for it is as a Chattel Real, and therefore his Executor ſhall have it.

The Guardian muſt not do waſte, nor infeoff, upon pain of loſing the Wardſhip: but he muſt maintain the Building out of the Iſſues of the Lands, and ſo reſtore it to the Heir.

If the Committee of the King commit, the Wardſhip ſhall be committed to another; if the Grantee, he ſhall loſe the Wardſhip.

And one of the Friends of the Ward, being his next Friend, that will may ſue for him.

If a Leaſe be made to a man and his Heirs for 20 years, it is a Chattel, and his Executor ſhall have it: otherwiſe if a man will a Leaſe to a man and his Heirs, here the word Heirs are words of Purchaſe, and his Heirs ſhall have it.

If a man grant *proximam advocationem* to *J. S.* and his Heirs, it is but a Chattel, for it is but for *unica vice.*

Writings pawned for Money lent are Chattels.

If a Woman have Execution of Lands by Statute Merchant, and taketh a Husband, he may grant it, for it is a Chattel.

Of Chattels Perſonal.

Chattels Perſonal are Gold, Silver, Plate, Jewels, Utenſils, Beaſts, and other Chattels and Moveable Goods whatſoever, Obligations, and Corn upon the ground.

All Goods as well moveable as unmoveable, Corn upon the ground, Obligations, Right of Actions, Money out of Bags, and Corn out of Sacks, *ſunt catalla.*

Money is not to be paſſed by the Grant of all his Goods and Chattels; nor Hawks, nor Hounds, nor other things *feræ naturæ*, for the property is not in any, not after they are made tame, longer then they are in his poſſeſſion; as my Hounds following me, or my Man, or my Hawk flying after a Fowl, or my Deer hunting out of my Park: but if they ſtray of their own accord, it is lawful for any man to take, and the Heir ſhall have them.

All

All Chattels shall go to the Executors: Vats and Furnaces fixed in a Brewhouse, or Dyehouse by the Lessee: if they be fixed by Tenant in Fee the Heir shall have them.

Now something hath been said concerning Possessions, it followeth that it be shewed, how they may be conveyed from one man to another.

CHAP. XXVIII.
Of CONVEYANCES.

IN every Conveyance there must be a Grantor and a Grantee, and something granted.

The Conveyance of some persons is void, of others voidable.

Conveyance of a Woman Covert is void without the consent of her Husband; and it ought to be made in her or his Name, except it be done as Executor to another.

Of an Infant, that which doth not take effect with the delivery of his own hands, is void, and an Action of Trespass will lie against him for taking the things given.

Otherwise it is but voidable, except it be as Executor, or for necessary meat and drink, &c. for his advantage.

Voidable of *non ſanæ memoriæ*, or made by Dureſs Royal.

Voidable by the parties themſelves and their Heirs, and by them that ſhall have their Eſtates, except *non ſanæ* himſelf.

Grants by Fine.

Voidable by a Writ of Error, by an Infant during his nonage, and by the Husband for a Fine levied by his Wife alone during their Marriage.

Conveyance of ſome perſons cannot be good for ever without the conſent of others, as the Dean without the Chapter, the Maior without the Commonalty, and of other Bodies Politick that have a Common Seal, or of a Parſon without the Patron and Ordinary.

If there be no Condition in the Conveyance, it ſhall be intended the elder.

A Conveyance made to a Female Covert ſhall be good and of effect, untill her Husband do diſagree.

An Infant may be Grantee, ſo may a Woman Outlawed, a Villain, a Baſtard, and a Felon.

A Baſtard can have no Heir but the Iſſue of his body lawfully begotten.

An

An Infant at the age of Diſcretion by his actual entry, and a Woman againſt the will of her Husband may be a Diſſeizor or a Treſpaſſor.

In all Conveyances there muſt be one named, which may take by force the Grant at the beginning of the Grant.

A Grant made to the right Heirs of one that is dead is good, or *Cuſtodibus Eccl.* is good for Goods.

All Chattels real or perſonal may be granted or given without a Deed.

Rent-ſervice, Rent-ſeck, Rent-charge, Common of Paſture, or of Turbary, Reverſion, Remainder, Advowſon, or other things, which lie not in manual occupation, may not be conveyed for years, for life, in Tail or in Fee, without Writing.

The Maior or Commonalty, or ſuch like, cannot make a Leaſe for years without a Deed.

CHAP. XXIX.
Of DEEDS.

THree things needful and pertaining to every Deed, Writing, Sealing, and Delivering.

In the Writing muſt be ſhewed t'e perſons Names, their Dwelling place, and Degree. Things granted upon what conſideration, the eſtate, whether abſolute or conditional, with the other circumſtances, and the time when it was done.

No Grant can be made but to him that was party to the Deed, except it be by way of Remainder.

The words muſt be ſufficient in Law to bind the parties: as if a man grant *omnes terras certa ſua*, a Leaſe for years paſſeth not but for Franktenement, at leaſt *nec per omnia bona ſua*.

Exceptio ſemper ultimo ponenda eſt.

The *Habend'* muſt include the Premiſſes.

A Condition cannot be reſerved but by the Grantor, and it is proper to follow the *Habend'* preſently.

The *Habend'* or Condition muſt not be repugnant to the Premiſſes, if it be it is void, and the Deed will take effect by the Premiſſes.

A Warrant is good although it extend not unto all the Lands, nor to all the Feoffees, or made by one of the Feoffors.

If it be razed or interlined in the Date, or in any material place, it is very ſuſpicious.

Of

Of Sealing.

A Writing cannot be ſaid to be a Deed if it be not ſealed, although it be written and delivered; it is but an Eſcrow.

And if it were ſufficiently ſealed, yet if the print of the Seal be utterly defaced, the Deed is inſufficient, it is not my Deed.

It may not be pleaded, but it may be given in Evidence.

Of Delivery.

A Deed taketh effect by the Delivery, and if the firſt take any effect, the ſecond is void.

A Jury ſhall be charged to enquire of the Delivery, but not of the Date; yet every Deed ſhall be intended to be made when it doth bear date.

Diverſity in delivering of a Writing as a Deed or Eſcrow.

This Delivery ought to be done by the party himſelf, or by his ſufficient Attorney, and ſo it ſhall bind him whoſoever wrote or ſealed the ſame.

If one be bound to make Aſſurance, he need not to deliver it, unleſs there be one to read it to him before.

And if any Writing be read in any other form to a man unlearned, it ſhall not be his Deed although he ſeal and deliver it.

There are two ſorts of Deeds.

A Deed Poll, which is the Deed of the Grantor; a Deed Indented, which is the mutual Deed of either Parties. But in Law one is the Deed of the Grantor, and the other the Counter Part: and if any variance be in them, it ſhall be taken as it is in the Deed of the Grantor; and if the Grantor ſeal onely it is good.

CHAP. XXX.

Bargains and Sales.

NO Manor Lands, Tenements, or other Hereditaments can paſs, alter, or change from one man to another, whereby an Eſtate of Inheritance or Freehold is made, or taketh effect in any perſon or perſons, or any uſe thereof is made, by reaſon onely of any Bargain and Sale therefore, except the

ſame

ſame be made by Writing indented, ſealed, and inrolled in one of the Courts of Record at *Weſtminſter*, or within the ſame Court or County where the Tenements ſo bargained do lie, before the *Cuſtos Rotulorum* and two Juſtices of Peace, and the Clerk of the Peace, or two of them, whereof the Clerk of the Peace to be one, and that within ſix moneths after the Date of ſuch Writing indented, 27 *H.*8.

The Inrolment ſhall be indented the firſt day of the Term, and ſhall have relation to the delivery of the Deed againſt all ſtrangers.

CHAP. XXXI.
FEOFFMENTS.

A Feoffment is an Eſtate made by the delivery of Poſſeſſion and Seizin by Party, or his ſufficient Attorney.

A man cannot make Livery of Seizin before he have the Poſſeſſion.

A Joynt Tenant cannot enfeoff his companion.

A copartner may make a Feoffment of his part, or releaſe.

A man cannot enfeoff his Wife.

A Diſſeizor cannot enfeoff the Diſſeizee; for his entry is lawful upon the Diſſeizor.

Such perſons as have poſſeſſion in Lands for years or for life, &c. cannot take by Livery and Seizin of the ſame Lands.

If a Feoffment be made, and the Leſſee for years give leave to the Leſſor to make Livery and Seizin of the Premiſſes, ſaving himſelf to his Leaſe, &c. and he doth, the Term is not ſurrendred, for the Leſſee had an Intereſt which could not be ſurrendred without his conſent to ſurrender, and here his intent to ſurrender doth not appear; wherefore he may enter and have his Term, and the Rent is renewed: but it is otherwiſe with a Leſſee for life, and the Rent is extinct.

The Leſſor cannot make Livery and Seizin againſt the will of the Leſſee being on the Land; but he may grant the Reverſion, and if the Leſſee do attorn, the Freehold will paſs without Livery of Seizin.

Livery of Seizin.

Livery of Seizin is a ceremony uſed in Conveyance of Lands, that the common people might know the paſſing or alteration of the Eſtate. It is requiſite in all Feoffments, Gifts,

Gifts in Tail, and Leaſes for life, made by Deed or without Deed.

No Freehold will paſs without Livery of Seizin, except by way of Surrender, Partition, or Exchange, or by matter of Record, or by Teſtament.

Livery of Seizin muſt be made in the lifetime of him that made the Eſtate.

Pacta clandeſtina ſunt ſemper ſuperſtitioſa.

By Livery of Seizin in one County the Lands in another County will not paſs.

Livery within view is good, if the Feoffee do enter in the life time of the Feoffor.

Livery may not be made of a Eſtate to be given *in futuro*, for no Eſtate in Franktenement may be given *in futuro*, but ſhall take effect preſently by Livery and Seizin.

Of Uſes.

The Statute of 27 H. 8. hath advanced Uſes, and hath eſtabliſhed Surety for him that hath the Uſe againſt the Feoffees: for before the Statute the Feoffees were Owners of the Land, but now it is deſtroyed, and the *ceſtuy que uſe* is the Owner of the ſame: before the Poſſeſſion ruled the Uſe, but ſince the

the Uſe governeth the Poſſeſſion. Indentures ſubſequent be ſufficient to direct the Uſes of a Fine or Recovery precedent, when no other certain and full Declaration was made before.

ATTORNEY.

An Attorney ought to do every thing in the name, and as the act of him which gave him the Authority; as Leaſes in name of the Leſſor, but he muſt ſay, By vertue of his Letter of Attorney I do deliver you Poſſeſſion and Seizin of, &c. for, &c.

An Attorney muſt firſt take poſſeſſion before he can make Livery of Seizin.

If an Attorney do make Livery of Seizin otherwiſe then he hath Warrant, then it is a Diſſeizin to the Feoffor.

An Attorney muſt be made by Writing ſealed, and not by Word.

CHAP. XXXII.
EXCHANGE.

IN Exchange both the Eſtates muſt be equal: there muſt be two Grants, and in every Grant mention muſt be made of this word Exchange.

It

It may be done without Livery of Seizin if it be in one Shire, or elſe it muſt be done by Indenture, and by this word Exchange, or elſe nothing paſſeth without Livery.

Exchange importeth in the Law a Condition of Re entry, and a Warranty Voucher, and Recompence of the other Land that was given in exchange. An Aſſignee cannot re-enter, nor vouch, but rebate; Exchanger may re-enter upon an Aſſignee. And the ſame Condition defeated in part is defeated in the whole. And the ſame Law is in Partition.

CHAP. XXXIII.
GRANTS.

GRants muſt be certain. A Grant to *J.S.* or *J.N.* is void for the incertainty, although it be deliverd to *J.S.* the delivery of the Deed will not make a void Grant good, or to take effect.

The Lord cannot grant the Wardſhip of his living Tenant, becauſe of the incertainty who ſhall be his Heir, unleſs he name ſome perſon.

When

When any thing is granted that is not certain, as one of my Horſes, then the choice is in the Grantee.

When ſeveral things are granted, then it is in the choice of him that is to do the firſt act.

A man cannot charge or grant that which he never had.

A man may charge a Reverſion.

A Parſon may grant his Tithes, or the Wooll of his Sheep, for years.

A thing in Action, a Cauſe of Suit, Right of Entry, or a Title for a Condition broken, or ſuch like, may not be given or granted to a ſtranger, but only to the Tenant of the Ground, or to him that hath the Reverſion or Remainder.

A thing that cannot begin without a Deed may not be granted without a Deed; as a Rent-charge, Fair, &c. Every thing that is not given by delivery of Hands, muſt be paſſed by Deed. The Right of a thing real or perſonal may not be given nor releaſed by word. A Rent or Condition or Re-entry may not be reſerved to one that is not Party to the Deed.

All things that are incident to others, paſs by the Grant of them that they are incident unto.

A

A man by his Grant cannot prejudice him that hath an elder title.

If no Eſtate be expreſſed in the Grant, and Livery and Seizin be made, then the Grantee hath but Eſtate for life: but if there be ſuch words in the Grant, which will manifeſt the will of the Grantor, ſo his will be not againſt the Law, the Eſtate ſhall be taken according to his intent and will.

All Grants ſhall have a reaſonable conſtruction, and all Grants are made to ſome purpoſe, and therefore Reaſon would they ſhould be conſtrued to ſome purpoſe.

All Grants ſhall be taken moſt ſtrong againſt him that made it, and moſt beneficial to him to whom it is made.

To Grants of Reverſion or of Rents, &c. there muſt be Attornment, otherwiſe nothing paſſeth, if it be not by matter of Record.

ATTORNMENT.

Attornment is the agreement of the Tenant to the Grant by writing or by word; as to ſay, I do agree to the Grant made to you, or I am well contented with it, or I do attorn unto you, or I do become your Tenant, or I do deliver unto the Grantee a Peny by way of Seizin of a Rent, or pay, or do but

but one Service onely in the name of the whole, it is good for all.

It muſt be done in the lifetime of the Grantor.

Without Attornment a Signory, a Rent-charge, a Remainder, or a Reverſion, will not paſs but by matter of Record.

Without Attornment Services paſs not by the ſale of the Manor, nor from the Manor but by bargain and ſale inrolled.

Attornment muſt be made by the Tenant of the Freehold, when a Rent charge is granted.

By the Attornment of the Termor to the Grantee of a Reverſion, with Livery, and the Rent alſo, though no mention be made thereof. Before Attornment a man may not diſtrain, nor have any Action of Waſte.

By Fine the Lord may have the Wardſhip of the Body and Lands, before the Attornment of his Tenant.

The end of Attornment is to perfect Grants, and therefore may not be made upon condition or for a time.

A Tenant that is to perfect a Grant by Attornment cannot conſent for a time, nor upon a condition, nor for part of a thing granted; but it ſhall enure the whole abſolutely.

If

If the Tenant have true notice of all the Grant, then ſuch Attornment is void.

Attornment neceſſary upon a Deviſe.

CHAP. XXXIV.
LEASES.

A Leaſe for years muſt be for time certain, and ought to expreſs the Term, and when it ſhould begin, and when it ſhould end certainly. And therefore a Leaſe for a year, and ſo from year to year during the life of *J.S.* but for two years it may be made by word or writing. If I leaſe to *J.N.* to hold untill 100 *l.* be paid, and make no Livery of Seizin, he hath Eſtate onely at will.

A Leaſe from year to year, ſo long as both the parties pleaſe, after Entry in any year it is a Leaſe for that year, &c. till warning be given to depart, 14 *H.*8.16.

A Leaſe beginning from henceforth ſhall be accounted from the day of the Delivery; from the making ſhall be taken incluſive from the day of the making, or of the Date excluſive.

If Lands diſcend to the Heir before his Entry, he may make a Leaſe thereof.

A man lets a Houſe *cum pertin'*, no Lands paſs: but if a man let a Houſe *cum omnibus terris eidem pertin'*, there the Lands therunto uſed paſs.

If a man lets Lands wherein are Cole Mines, Quarries, and ſuch like, if they have been uſed the Tenant may uſe them if they be not open; if the Tenant for them imploy them not on the Land, it is Waſte: likewiſe Marl. The Land is the place where the Rent is to be paid and demanded, if no other place between the parties be limited.

Treſpaſs is not given for paying of the Rent to the Leſſor, howſoever it be payable there.

And if a man let Lands without Impeachment of Waſte, and a ſtranger cut down the Trees, and the Leſſee doth bring an Action of Treſpaſs, he ſhall not recover for the value of the Trees, but for the Crop and burſting of his Cloſe, and the Heir of the Leſſor ſhall have ſuch Trees, and not the Executor of the Leſſee, unleſs they be cut by the Leſſee, and enjoyed by the Grantee without Waſte.

Leſſee for years or for life, Tenant in dower or by the courteſie, or Tenant in tail after poſſibility, &c. have onely a ſpecial intereſt or property in the Trees, being upon the Ground

Ground growing as a thing annexed unto the Land, ſo long as they are annexed thereunto.

But if the Leſſee or any other ſever them from the Land, the property and intereſt of the Leſſee in them is determined, and the Leſſor may take them as things that are parcel of his Inheritance, the Intereſt of the Leſſee being determined.

To accept the Rent of a void Leaſe will not make the Leaſe good, but avoidable it will.

If the Husband and Wife do purchaſe Lands to them and their Heirs of the Husband, and he make a Leaſe, and die; his Wife may enter, and avoid the Leaſe for her life: but if ſhe die, leaving the Husband, who afterward dies before the term ends, the Leaſe is good to the Leſſee againſt the Heir.

Where it is covenanted and granted to *J.S.* that he ſhall have 5 Acres of land in *D* for years, this is a good Leaſe, for *conceſſit* is of ſuch force as *dimiſit*.

If a man make a Leaſe for 10 years, and afterwards maketh another Leaſe for 21 years, the later ſhall be a good Leaſe for 11 years, when the firſt is expired.

If the Leſſee at his coſt do put Glaſs into the Window, he may not take the ſame away again,

again, but he ſhall be puniſhed for Waſte: and ſo of Wainſcot and Seeling, if it be not fixed with Screws.

Tenant in Tail may make a Leaſe for ſuch Lands or Inheritance, as have been commonly letten to farm, if the old Leaſe be expired, ſurrendred, or ended, within one year after the making of the new; but not without Impeachment of Waſte, nor above 21 years, or 3 lives, from the day of the making, reſerving the Old Rent or more, 32 *H.*8. by Indenture of Leaſe, by Tenant in Tail, for 21 years, made according to the form of the Statute, rendring the ancient or more Rent: if the Tenant in Tail die, it is a good Leaſe againſt his Iſſue: but if a Tenant in Tail die without Iſſue, the Donor may avoid this Leaſe by Entry, 32 *H.*8.28. And if he in the Remainder do accept the Rent, it ſhall not tie him, for that the Tail is determined, the Leaſe is determined and void, *Ed.*6.19.

The Husband may make ſuch a Leaſe of his Wifes Lands by Indenture, in the name of the Husband and Wife, and ſhe to ſeal thereunto, and the Rent muſt be reſerved to the Husband and his Wife, and to the Heirs of the Wife, according to her Eſtate of Inheritance.

A Leaſe made by the Husband alone, of the Lands of his Wife, is void after his death; but the Leſſee ſhall have his Corn.

By the Husband and Wife voidable, if it be not made as aforeſaid.

If a man do let Lands for years, or for life, reſerving a Rent, and do enter into any part thereof, and take the profit thereof, the whole Rent is extinguiſhed, and ſhall be ſuſpended during his holding thereof.

The acceptation of a Re-demiſe to begin preſently, is ſuſpenſion of the Rent before any Entry: otherwiſe of a Re-demiſe to begin *in futuro*.

Reſervations and Exceptions.

There are divers words by which a man may reſerve a Rent, and ſuch like, which he had not before, or to keep that which he had, as *tenendum*, *reſervandum*, *ſolvendum*, *faciendum*, it muſt be out of a Meſuage, and where a Diſtreſs may be taken, and not out of a Rent, and muſt be comprehended within the purport of the ſame word.

Exceptions of part ought always to be of ſuch things which the Grantor had in poſſeſſion at the time of the Grant.

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The Heir ſhall not have that which is reſerved, if it be not reſerved to him by ſpecial words.

If a man make a Feoffment of lands, and reſerve any part of the profits thereof, as the Graſs or the Wood, that Reſervation is void, becauſe it is repugnant to the Feoffment.

A man by a Feoffment, Releaſe, Confirmation, or Fine, may grant all his right in the land, ſaving unto him his Rent charge, &c. Things that are given onely by taking and uſing, as Paſture for four Bullocks, or two loads of Wood, cannot be reſerved but by way of Indenture, and then they ſhall take effect by way of Grant of the Grantor, during his life and no longer without ſpecial words.

Exceptions of things, as Wood, Mines, Quarry, Marl, or ſuch like, if they be uſed, it is implied by the Law that they ſhall be uſed; and the things without which they cannot be had, is implied to be excepted, although no, &c.

But otherwiſe, if they be not uſed, then the way and ſuch like muſt be excepted.

An Aſſignee may be made of lands given in Fee, or for life, or for years, or of a Rent-charge, although no mention be made of the Aſſignee in the Grant.

But

But otherwiſe it is of a Promiſe, Covenant, or Grant or Warranty.

If a leſſee do aſſign over his term, the leſſor may charge the leſſee or aſſignee at his pleaſure.

But if the leſſor accept of the Rent of the Aſſignee, knowing of the Aſſignment, he hath determined his acceptation, and ſhall not have an Action of Debt againſt the leſſee, for Rent due after the Aſſignment.

If after the Aſſignment of the leſſee the leſſor do grant away his Reverſion, the Grantee may not have an Action of Debt againſt the leſſee.

If a leſſee do aſſign over his Intereſt and die, his Executor ſhall not be charged for Rent due after his death.

If the Executor of a leſſee do aſſign over his Intereſt, an Action of Debt doth not lie againſt him for Rent due after the Aſſignment.

If the leſſor enter for a Condition broken, or the leſſee do ſurrender, or the Term end, the leſſor may have an Action of Debt for the Arrearages.

A leaſe for years rendring Rent, with a Condition, that if the leſſee aſſigneth his term, the leſſor may re enter. The leſſee aſſigneth, the leſſor receiveth the Rent of the hands of

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the Aſſignee, not knowing of the Aſſignment, it ſhall not exclude the Leſſor of his Entry.

A thing in a Condition may be aſſigned over for good cauſe as juſt debt: as whereas a man is indebted to me 20 *l.* and another do owe him 20 *l.* he may aſſign over his Obligation unto me in ſatisfaction of my Debt, and I may juſtifie the ſuing for the ſame in the name of the other at my own proper coſts and charges.

Alſo where one hath brought an Action of Debt againſt *J. N.* which promiſeth me that if I will aid him againſt *J. N.* I ſhall be paid out of the ſumme; in demand I may aid him.

An Aſſignee of Lands if he be not named in the Condition, yet he may pay the money to ſave his Land.

But he ſhall receive none if he be not named: the tender ſhall be to the Executor of the Feoffees.

Aſſignee ſhall always be intended, he that hath the whole Eſtate of the Aſſignor, that is aſſignable. A Condition is not aſſignable, and not of an Executor or Adminiſtrator. If there be ſuch an Aſſignee, the Law will not allow an Aſſignee in the Law, if there be an Aſſignee indeed: ſo long as any part of the Eſtate remaineth to the Aſſignor, the tender ought to be made to him or his Heirs, it ſerveth: yet a

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colourable payment to the Heir ſhall not veſt the Eſtate out of the Aſſignee, as a true payment will, viz. Covenant.

CHAP. XXXVI.
SURRENDERS.

A Surrender is an Inſtrument teſtifying with apt words, that the particular Tenant of Lands or Tenements, for life or years, doth ſufficiently conſent, that he which hath the next immediate Remainder or Reverſion thereof, ſhall alſo have the particular Eſtate of the ſame in poſſeſſion; and that he yieldeth or giveth the ſame to him for ever. Surrender ought forthwith to give a preſent poſſeſſion of the thing ſurrendred unto him which hath ſuch an Eſtate, where it may be drowned.

A Joynt Tenant cannot ſurrender to his Fellow.

Eſtating of things that may not be granted without a Deed, may be determined by the Surrender of the Deed to the Tenant of the Land.

Leaſe for years cannot ſurrender before his term begin; he may grant, he cannot ſurrender part of his Leaſe.

Surrenders are in two manners, in Deed, in Law.

A Surrender in Law is when the Leſſee for years doth take a new Leaſe for more years.

A Surrender in Deed muſt have ſufficient words to prove the aſſent and will of the Surrenderer to ſurrender, and that the other do alſo thereunto agree.

The Husband may ſurrender his Wifes Dower for his life, and her Leaſe for ever.

By Deed indented a man may ſurrender upon Condition.

CHAP. XXXVII.
RELEASES.

A Releaſe is the giving or diſcharging of a Right or Action, which a man hath or claimeth againſt another, or out of or in his Lands.

A Releaſe or Confirmation made by him that at the time of the making thereof had no right, is void: if a right come to him afterwards, unleſs it be with Warranty, and then it ſhall bar him of all right that ſhall come to him after the Warranty made.

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Releaſe or Confirmation made to him that at the time of the Releaſe or Confirmation made had nothing in the lands, is void, it behoveth him to have a Freehold or a Poſſeſſion and Privity.

A Releaſe made to a Leſſee for years before his Entry is void.

A man may not releaſe upon a Condition, nor for time, nor for part; but either the Condition is void, and the Time is void, and the Releaſe ſhall enure to the party to whom it is made for ever, for the whole, by way of Extinguiſhment. But a man may deliver a Releaſe to another as an Eſcrow, to deliver to *J.S.* as his act and deed, if *J.S.* do perform ſuch a thing: or Releaſe upon a Condition by Deed indented, may be good.

A Joynt Tenant or a Rent-charge may releaſe, yet all the Rent is not extinct, nor yet if he purchaſe the lands, his Fellow ſhall have the Rent ſtill.

If the Grantee releaſe parcel of a Rent-charge to the Grantor, yet all the Rent is not extinct.

A Releaſe to charge an Eſtate ought to have theſe words, Heirs, or words to ſhew what Eſtate he ſhall have.

A Releaſe made to him that hath a Reverſion or a Remainder in Deed, ſhall ſerve and help him that hath the Franktenement: ſo ſhall a Releaſe made to a Tenant for Life, or a Tenant in Tail, inure to him in the Reverſion or Remainder, if they ſhew it; and ſo to Treſpaſſors and Feoffors, but not to Diſſeizors.

A Releaſe of all manner of Actions doth not take away an Entry, nor the taking of ones Goods again, nor is any plea againſt an Executor.

A Releaſe of all Demands extinguiſheth all Actions real and perſonal, Appeals, Executions, Rent charge, Common of Paſture, Rent ſervice, and all Right and Seizure, and all right in Lands and property in Chattels: but not a poſſibility or future duty, as a Rent payable after my death, and ſuch like.

CHAP. XXXVIII.
CONFIRMATION.

COnfirmation is when one ratifieth the Poſſeſſion, as by Deed to make his Poſſeſſion perfect, or to diſcharge his Eſtate, that may be defeated by anothers Entry.

As

As if a Tenant for life will grant a Rent charge in Fee, then he in the Reverſion may confirm the ſame Grant: whereas a man by his Entry may defeat an Eſtate, there by his Deed of Confirmation he may make the Eſtate good.

A Confirmation cannot charge an Eſtate that is determined by expreſs Condition or Limitation. To confirm an Eſtate for an hour, if it be for Tenant for life, it is good for life; i. to Tenant in fee, for ever.

A Leaſe for years may be confirmed for a time, or upon condition, or for a piece of the Land: but if a Franktenement be, it ſhall enure to the whole abſolutely.

A Confirmation to charge an Eſtate, muſt have words to ſhew what Eſtate he ſhall have.

To confirm the Eſtate of Tenant for life to his Heirs, cannot be but by *Habend'*, the Land to him and his Heirs: and therefore it is good to have ſuch an *Habend'* in all Confirmations.

In a Confirmation new Service may not be reſerved, and old may be abridged.

A Confirmation made to one Diſſeizor ſhall be voidable to the other; ſo ſhall not a Releaſe.

CHAP. XXXIX.
CONDITION.

THere are two manners of Conditions, one expreſſed by words, another implied by the Law; the one called a Condition in Deed, the other a Condition in Law.

Eſtate made, and the Condition againſt the Law, the Eſtate's good, the Condition's void.

If the Eſtate beginneth by the Condition, then both are void.

Bonds with Conditions expreſſy againſt the Law are void.

Conditions repugnant, the Eſtate good, the Conditions void.

Conditions impoſſible are void, the Eſtate good: it ſhall not enlarge any Eſtate.

By pleading a man may not defeat an Eſtate of Franktenement, by force of a Condition in Deed, without he ſhew the Condition of Record, or in writing ſealed; yet the Jury may help a man where the Judges will take their Verdict at large: of Chattels he may.

Promiſe doth make a Condition but when it doth depend upon another Sentence, or hath reference to another part of the Deed,

it maketh no Condition, but a qualification or limitation of the Sentence, or of that part of the Deed, as provided that the perſon of the Grantee ſhall not be charged.

He which hath Intereſt in a Condition may fulfill the ſame for ſafeguard of himſelf.

Between the parties it is not requiſite the Condition be performed in every thing if the other do agree: but to a ſtranger it muſt.

If the Obligee be party to any Act by which the Condition cannot be performed, then the Obligor ſhall be diſcharged: ſo he ſhall be by the Act of the Condition.

Where the firſt Act in the Condition is to be performed by the Obligee, and he will not do it, there the Obligation is not forfeited.

Where no time is ſet, if the Condition be for the good of a ſtranger, or of the Obligee, then it is to be performed within convenient time, if for the good of the Obligor at any time during their lives; immediately ſhall not have ſuch a ſtrict conſtruction, but that it ſhall ſuffice if it be done in convenient time.

If a man be bound to pay Money, or farm Rent, he muſt ſeek the parties: but if he be bound to perform all payment, if he render his Farm on the land it ſufficeth.

If the Feoffee or Feoffor die before the day of payment, the tender ſhall be to the Executor, although the Heir of the Feoffee do enter, if the Heir be not named. *Vide Aſſignee in Aſſignment.*

The money muſt be tendered ſo long before Sun ſet, that the Receiver may ſee to tell it.

To pay part of a Summe at the day cannot be ſatisfaction for the whole Summe; as a Horſe or a Robe is. But before the day, or at another place, at the day of the requeſt, and acceptance of the Obligee, is full ſatisfaction.

An Acquittance is a good bar if nothing be paid.

In all caſes of Conditions a payment of a certain Summe in groſs, touching Lands or Tenements, if lawful tender be once refuſed, he which made the tender is diſcharged for ever.

And the manner of the tender and payment ſhall be directed by him that made it, and not by him that did accept it, as that he paid the Summe in full ſatisfaction, and that he accepted thereof in full ſatisfaction.

An Acquittance is a good bar, &c.

Where a man is bound to pay money to make a Feoffment, or renounce an Office, or the like, and no time is limited when he ſhall do

do it, then upon requeſt he is bound to perform it in ſo ſhort a time as he may.

But where the time is limited, if he do refuſe before the day it is no matter, if he be ready to perform it at the day.

Where a Covenant or Condition is to marry or enfeoff a ſtranger by ſuch a day, the refuſal of the ſtranger is no plea, as that of the Obligee is. The Obligee is to be ready on the Land at his own peril; a ſtranger muſt be requeſted; if he refuſe, the Obligation is forfeited: wherefore it is good to have theſe words, *If the ſtranger do thereunto aſſent.*

Entry.

The Determination of an Eſtate is not effected before Entry.

When any perſon will enter for a Condition broken, he muſt be ſeized on the ſame courſe and manner he was when he departed from his Poſſeſſion.

It behoveth ſuch perſons as will re-enter upon their Tenants to make a demand of the Rent.

If the Leſſor demand before he die, his Heir may enter.

If the Leſſor diſtrain he may not re-enter.

The Leſſor may accept of the Rent, and yet re-enter: but if he receive the next Rent, he may not, for that eſtabliſheth the Leaſe.

Entry into one Acre in the name of more is good: if doth not extend into two Counties,

By the Entry of the Husband the Franktenement ſhall be in the Wife: and ſo of ſuch like.

In Gavilkind Land the eldeſt Son onely ſhall enter for the breach of a Condition.

DEMAND.

The Land is the place where the Rent is to be paid and demanded, if there be no other place appointed.

And there the Leſſor himſelf, or his ſufficient Attorney, a little before Sun-ſet, in the preſence of two or three ſufficient Witneſſes if all ſay, Here I demand of *J. B.* 10 *l.* due to me at the Feaſt of, &c. for a Meſuage, &c. which he holdeth of me in Leaſe by Indenture, &c. and there remain the laſt day the Rent is due to be paid, untill it be ſo dark that he cannot ſee to tell the Money.

CHAP. XL.
WARRANTIES.

THere are three manner of Warranties, Lineal, Collateral, By Diſcent.

Warranty Lineal is where a man by his Deed bindeth him and his Heirs to Warranty, and dieth, and the Warranty doth diſcend to his Iſſue.

Warranty Collateral is in another line, ſo that he to whom it diſcendeth cannot convey the Title that he hath in the Teſtaments by him that made Warranty.

Warranty by Diſſeizin is where he which hath no right to enter entereth, and maketh a Warranty: this is by Diſſeizin, and barreth not.

Lineal Warranty barreth him that claimeth Fee, and alſo Fee Tail with Aſſets in Fee: if he ſell his Son may have a *Formedon.*

Collateral Warranty is a Bar to both, except in ſome caſes that be remedied by Statute, as Warranty by Tenement, by the Courteſie, except he hath enough by Diſcent by the ſame Tenement.

Tenant.

TENANT

In Dower for life, not remedied, but do bar the Heir and him in Reverſion.

A Warranty diſcendeth always to the Heir at the Common Law, *viz.* the eldeſt Son, and followeth the Eſtate, and if the Eſtate may be defeated, the Warranty may alſo.

It barreth not the ſecond Son in Gavilkind, although all the Sons ſhall be vouched, and not the eldeſt Son alone: yet he onely ſhall be barred.

To plead a Warranty againſt him that made it or his Heirs, is called a *Rebutter*.

Where Fee or Franktenement is warranted, the party ſhall have no advantage if he be not Tenant.

Where a Leaſe for years is warranted, it ſhall be taken by way of Covenant, and good if he be outed.

The Feoffor by the words of *dedi & conceſſi* ſhall be bound to Warranty during his own life.

CHAP. XLI.
COVENANTS.

COvenants are of two ſorts, expreſſed by words in the Deed, or implied by the Law. A Covenant in Deed is an Agreement made by the Deed in writing between two perſons, to perform ſome things and ſealed: for no Writ of Covenant is maintainable without ſuch a Specialty but in *London*, &c.

When a Covenant doth extend to a thing in being parcel of the Demiſe, or thing to be done by force of the Covenant is *quodammodo* annexed, or appertaining to the thing demiſed, and goeth with the Land, it ſhall bind the Aſſignee if he be not named: as to repair the Houſes, it ſhall bind all that ſhall come to the ſame by the act of the Law, or by the act of the Party.

But if the Covenant do concern the Land, or thing demiſed in ſome ſort, the Aſſignee ſhall not be charged although he be named; as to make a Wall at another bodies Houſe, or to pay a Summe of Money to the Leſſor or to a ſtranger; but the Leſſee his Executors and Adminiſtrators ſhall be charged.

If

If the Covenant do extend to a thing that had no being, but to be made new upon the land, it ſhould bind the Aſſignee if he be named, becauſe he ſhall have the benefit of it.

If a man make a leaſe for years, and the leſſee covenanteth and granteth to pay, &c. to the leſſor, his heirs and aſſigns, yearly during, &c. ten pounds, his Executors ſhall have it.

A Covenant in Law upon a Demiſe or Grant, the Aſſignee in deed or in law may have a Writ of Covenant.

An Obligation to perform all Covenants and Grants is forfeit on the breach of a Covenant in law.

A Covenant in law is not broken but by an elder title.

A Covenant in law may be qualified by the mutual conſent of the parties.

CHAP. XLII.

How Chattels Perſonal may be bargained, ſold, exchanged, lent, and reſtored.

A Contract is properly where a man for his Money ſhall have by the aſſent of another certain Goods, or ſome other profit at the time of the Contract, or after.

In

In all Bargains, Sales, Contracts, Promiſes, and Agreements, there muſt be *quid pro quo* preſently, except day be given expreſly for the payment, or elſe it is nothing but Communication.

If a man do agree for a price of Wares, he may not carry them away before he hath paid for them, if he have not day expreſly given him to pay for them.

But the Merchant ſhall retain the Wares untill he be paid for them; and if the other take them, the Merchant may have an Action of Treſpaſs or an Action of Debt for the Money at his choice.

If the bargain be that you ſhall give me 10 *l.* for my Horſe, and you do give me 1 *d.* in earneſt, which I do accept; this is a perfect bargain, you ſhall have the Horſe by an Action of the caſe, and I ſhall have the Money by an Action of Debt.

If I ſay the price of a Cow is four pounds, and you ſay you will give me four pounds, and do not pay me preſently, you may not have her afterwards except I will, for it is no contract. But if you go preſently to telling of your Money, if I ſell her to another, you ſhall have your Action of the caſe againſt me.

If I buy an hundred loads of Wood to be taken in ſuch a Wood at the appointment of the Vendor; if he upon requeſt will not aſſign them unto me, I may take them, or I may ſell them: but if a ſtranger do cut down any part of the Trees, I may not take them, but I may ſupply my Garantee of the reſidue, or have my Action of the Caſe.

If the bargain be, that I ſhall give you 10 *l.* for ſuch a Wood, if I like it upon the view thereof; this is a bargain at my pleaſure upon my view: and if the day be agreed upon, if I diſagree before the day, if I agree at the day, the bargain is perfect, although afterwards I do diſagree. But I may not cut the Wood before I have paid for it; if I do, an Action of Treſpaſs will lie againſt me, and if you ſell it to another, an Action of Treſpaſs on the caſe will lie againſt you.

If I ſell my Horſe for money, I may keep him until I am paid; but I cannot have an Action of Debt until he be delivered, yet the property of the Horſe is by the bargain in the Bargainor or Buyer: but if he do preſently tender me my money, and I do refuſe it, he may take the Horſe, or have an Action of Detainment. And if the Horſe die in my Stable between the bargain and the delivery, I may have an Action of Debt for my mo-

money, becauſe by the bargain the property was in the Buyer.

If a Deed be made of Goods and Chattels, and delivered to the uſe of the Donee, the property of the Goods and Chattels are in the Donee preſently. Before any Entry or Agreement the Donee may refuſe them if he will.

If I take a Horſe of another mans, and ſell him, and the Owner take him again, I may have an Action of Debt for the money, for the bargain was perfect by the delivery of the Horſe, *& caveat emptor*. Every Contract importeth in it ſelf an Aſſumption; for when one doth agree to pay money, or deliver a thing upon conſideration, he doth as it were aſſume and promiſe to pay and deliver the ſame, and therefore when one ſelleth any Goods to another, and agreeth to deliver them at a day to come: and the other in conſideration thereof agreeth to pay ſo much money on the delivery, or after; in this caſe he may have an Action of Debt, or an Action on the Caſe upon the Aſſumption.

The duty to reſign an Action perſonal may not be apportioned: as if I ſell my Horſe and another mans for 10 *l.* who taketh his Horſe again, I ſhall have all the money.

If

If a man retained a Servant for 10 *l. per ann.* and he depart within the year, he can have no wages: if it were to be paid at two Feaſts, and the man after the firſt Feaſt die, he ſhall have wages but for the firſt Feaſt: therefore men take order for it in their Wills.

By a Contract made in a Fair or Market the property is altered, except it be to the King, ſo that the Buyer know not of the former property, and do pay Toll, and enter it: and thoſe things as thereupon ought to be done, it muſt be on the Market, and at the place where ſuch things are uſually ſold, as Plate at the Goldſmiths Stall, and not in his inner ſhop.

In exchange of a Horſe for a Horſe, or ſuch like, the bargain is good without giving of day or delivery.

If a thing be promiſed by way of recompence for a thing that is paſt, it is rather an Accord then a Contract; and upon an Accord there lieth no Account, but he unto whom the promiſe is made, may have charge by reaſon of the promiſe, which he hath alſo performed; then he ſhall have an Account for the thing promiſed, though he that made the promiſe hath no profit thereby: as if a man ſay to another man, Heal ſuch a poor man,

man, or make ſuch a High Way, &c.

The intent of the party ſhall be taken according to the Law, as if a man retain a Servant, and do not ſay one year, or how long he ſhall ſerve him, it ſhall be taken for one year according to the Statute.

In all Contracts he that ſpeaketh obſcurely or ambiguouſly is ſaid to ſpeak at his own peril, and ſuch ſpeeches are to be taken ſtrongly againſt himſelf.

CHAP. XLIII.

Of Lending and Reſtoring.

IF Money, Corn, Wine, or ſuh other things, which cannot be re-deliver'd, be occupied on borrowed, if it periſh, it is at the peril of the borrower.

But if a Horſe or a Cart, or ſuch other things, as may be uſed and delivered again, be uſed in ſuch manner as they were lent, if they periſh, he that oweth them ſhall bear the loſs, if they periſh not through the default of him that did borrow them, or that he did make a promiſe at the time of delivery to re-deliver them ſafe again. If they be occupied in any other wiſe then according to the lending, in what wiſe ſoever it periſh; if it

be

be not in default of the Owner, he that did borrow them ſhall be charged with them in Law and Conſcience.

If a man have Goods to keep a certain day, he ſhall be charged or not charged after as default or defaults are in him.

But if he have any thing for keeping them ſafe, or make promiſe to re-deliver them, he ſhall be charged with all chances that may fall becauſe of his promiſe.

If a man find Goods of another mans, if they be hurt or loſt by the negligence of him that found them, he ſhall be charged to the Owner.

If a common Carrier go by ways that be dangerous for robbing, and will drive by night, or other unfit times, and is robbed: or if he do overcharge his Horſes, or driveth ſo that his Stuff fall into the water, or otherwiſe be hurt by his default, he ſhall be charged by his default

And if a Carrier would percaſe refuſe to carry, unleſs a promiſe were to him, that he ſhall not be charged with any ſuch miſdemeanour, that promiſe were void.

Every Inholder is bound by the Law *bona & catalla* of his Gueſt to keep in ſafety, ſo long as it is within the Inn, if the Gueſt did not deliver them unto him, nor acquaint him with them.

He

He ſhall not be charged if the Servant or Companion of the Gueſt do imbezel them; or if the Gueſt do leave them in the outward Court.

The Horſſer ſhall not anſwer for the Horſe that is put to paſture at the requeſt of the Gueſt; but if he do it of his own head, he ſhall.

If any man offer to take away my Goods, I may lay my hands upon him, and rather beat him then ſuffer him to take or carry them away.

CHAP. XLIV.

How far other Mens Contracts and Miſdemeanors do bind us.

A Man ſhall be bound by many Treſpaſſes of his Wife, but not to ſuſtain corporal puniſhment for it.

For Murder, Felony, Battery, Treſpaſs, Borrowing or Receiving of money in his Maſters Name by a Servant, the Maſter ſhall not be charged unleſs it be done by his command, or came to his uſe by his aſſent.

If I command one to do a Treſpaſs, I ſhall be a Treſpaſſor, or otherwiſe if I do but conſent. There is no Acceſſary in Treſpaſs.

We

We ſhall be charged if any of our Family lay or caſt any thing into the High Way, to the noiſance of His Majeſties Liege People.

Every man is bound to make recompence for ſuch hurt as his beaſts ſhall do in the Corn or Graſs of his Neighbour, though he knew not that they were there; and for his Dogs, Bears, &c if they hurt the Goods or Chattels of any other, for that he is to govern them.

A man ſhall not be charged by the Contract of his Wife or his Servant, if the thing come to his uſe, having no notice of it. But if he command them to buy, he ſhall be charged though they come not to his uſe, or had notice thereof.

If a Wife or Servant uſe to buy or ſell, if he ſell his Maſters Horſe, and exchange his Ox for Wheat that cometh to his Maſters uſe, his Maſter may not have an Action of Treſpaſs for it, but he ſhall be charged for the Corn, and the other need not to ſhew that he had Warrant to buy for him.

If a man-ſervant that keepeth his ſhop, or that uſeth to ſell for him, ſhall give away his Goods, he ſhall have Treſpaſs againſt the Donee.

But if I deliver my Goods to another to keep to my uſe, and he do give them away, I ſhall

ſhall not; for the Donee had notice whoſe Goods they were, as in the caſe of the Servant.

If a man make another his general Receiver, which receiveth money, and maketh an Acquittance, and payeth not his Maſter, yet that payment diſchargeth the Debtor.

If a Servant keep his Maſters fire negligently, an Action lieth againſt the Maſter: otherwiſe if he bear it negligently in the ſtreet.

If I command my Servant to diſtrain, and he doth ride on the Diſtreſs, he ſhall be puniſhed, not I.

If a man command his Servant to ſell a thing that is defective, generally to whom he can ſell it; Deceit lieth not againſt him: otherwiſe if he bid him ſell it to ſuch a man, it doth.

A Contract or a Promiſe made to the wife is good, when the husband doth agree: ſo it is to a Servant; and it ſhall be ſaid to be made to the husband and maſter himſelf.

If a man taketh a Wife that is in debt, he ſhall be charged with her debts during her life; if ſhe die, he ſhall be diſcharged.

CHAP.

CHAP. XLV.

Wills and Teſtaments.

HAving hitherto treated of ſuch Contracts as do take effect in the life time of the Parties, with their differences, it is now to deal with Inſtruments which take effect after their deaths, that thoſe things which they have preſerved with care, & gotten with pains in their life, might be left to their Poſterity in peace and quietneſs after their death: of which ſort are laſt Wills and Teſtaments.

There are two ſorts of Wills, Written and Nuncupative.

A Nuncupative Teſtament is when the Teſtator doth by Word onely without Writing declare his Will before a ſufficient number of his Chattels onely; for Lands paſs not but by Writing. It may for the better continuance after the making be put in Writing, and proved: but it is ſtill a Teſtament Nuncupative.

A written Teſtament is that, which at the very time of the making thereof is put in writing, by which kind of Teſtament in writing

ting onely Lands and Tenements paſs, and not by word of mouth onely.

Two things are required to the perfection of a Will by which Lands paſs, *viz.* firſt, Writing, which is the beginning; ſecondly, the death of the Deviſor, which is the finiſhing.

In a Will of Goods there muſt be an Executor named: otherwiſe of Lands.

A man may make one Executor or more ſimply, or conditionally for a time, or for parcel of his Chattels.

If no Executor be named, then it ſtill retaineth the name of a laſt Will, and ſhall be annexed to the Letters of Adminiſtration in regard of the Gift.

Gavilkind Lands may be deviſed by Cuſtom.

Lands holden in Soccage tenure are all deviſable in writing, but Knights Service two parts in three.

Fear, Fraud, and Flattery, three unfit accidents to be at the making of a Will.

A Woman may make a Will of the Goods of her Husband by his conſent and licence: by word is ſufficient, and of the Goods ſhe hath as Executor without his conſent; but ſhe cannot give them unto him.

A Boy after his age of Fourteen, and a Maid after her age of Twelve, may make a Will of their Goods and Chattels by the Civil Law.

The Will of the Donor ſhall be always obſerved, if it be not impoſſible, or greatly contrary to the Law.

A Deviſor is intended *inops conſilii*, and the Law ſhall be his Counſel, and according to his intent appearing in his Will, ſhall ſupply the defect of his words.

A Prerogative Will is 5 *l.* in another Dioceſe.

A man may not traverſe the Probate of a Teſtament, or Letters of Adminiſtration directly, but he may ſay againſt the Teſtament, that the Teſtator never made the party his Executor.

CHAP. XLVI.
DEVISES.

A Deviſe ought to be good and effectual at the time of the death of the Deviſor.

The Deviſee may not enter into the term, or take a Chattel, but by the delivery of the Executor.

But he may ſue for it in Court Chriſtian.

In-

Into Franktenement or Inheritance he may enter.

Deviſees are Purchaſees: as if a Leaſe for years be willed to a man and his Heirs, the Heir ſhall have it; for Heir is a name of Purchaſe here.

A Reverſion of Lands or Tenements will paſs by the name of Lands and Tenements in a Deviſe.

If a man deviſe all his Lands and Tenements; a Leaſe for years doth not paſs where he hath Lands in Fee, and alſo a Leaſe there, otherwiſe it will.

If a man deviſe all his Goods, a Rent-charge which he had for years will paſs, and all other his perſonal Chattels.

And if a man give all his Moveables to one, he ſhall have all his Horſes, Cattel, Pans, and perſonal Chattels; and all his Immoveables to another, he ſhall have all his Corn growing, and Fruit on his Trees, and the Chattels real.

A man may deviſe Lands or Goods to an Infant in the Mothers belly, or Goods to the Churchwardens of *D*.

There is great diverſity where the property is deviſed; and when the Occupation is deviſed a man may deviſe, that a man ſhall have the Occupation of his Plate, or other

Chattels during his life or for years, and if he die within the term, that it ſhall remain to *M.A.* and it is good; for the firſt hath but the occupation, and the other after him ſhall have the property.

But if a Chattel be given to one for life, the Remainder to another, the Remainder is void.

For a Grant or Deviſe of a Chattel for an hour is good for ever, and the Deviſee may diſpoſe of it; but if he do not, the other ſhall have it.

A man may deviſe his Lands he holdeth in Leaſe, but not his Leaſe, under this condition; provided that if the Deviſee die within the term, then he ſhall have it.

If a man will his Goods to his Wife, and that after her deceaſe his Son and Heir ſhall have the Houſe wherein they are; ſhe ſhall have the Houſe for term of her life, yet it is not deviſed unto her by expreſs words. But it doth appear that his intent was ſo by the words.

If a man willeth his Lands to his Wife till his Son cometh to the Age of 21 years, and the Woman taketh another Husband and dieth, the Husband ſhall have the Intereſt.

By a Deviſe a man may have the Fee Simple without expreſs words of Heirs: as if Lands be willed to a man for ever, or to have and to hold to him and to his Aſſigns, &c.

By Will Lands may be entailed without the word Body: as if Lands be given to a man and his Heirs male, it doth make an Eſtate Tail.

If a man will that his Executors ſhall ſell his Lands, the Inheritance doth deſcend to the Heir: yet the Executors may enter and enfeoff the Vendee.

But if Lands be given to the Executor to ſell, and they receive the profits thereof to their own uſe, and do not ſell the ſame in reaſonable time, the Heir may enter.

An Executor may ſell if the others will not.

If Lands be recovered againſt Tenant for life or for years, by an Action of Waſte or former Title, he may not give his Corn.

If the Cognizee have ſown the Lands, and the Cognizor bring a *Scire*, he may give the Corn ſown.

If a man deviſe *omnia bona & catalla*, Hawks nor Hounds do not paſs, nor the Deer in the Park, nor the Fiſh in the Ponds.

CHAP. XLVII.
EXECUTORS.

AN Executor is he that is named and appointed by the Teſtator to be his Succeſſor in his ſtead to enter, and to have his Goods and Chattels, to uſe Actions againſt his Debtors, and Legacies ſo far as his Goods and Chattels will extend.

Where two Executors are made, and one doth prove the Will, and the other doth refuſe, notwithſtanding he that refuſeth may adminiſter at his pleaſure, and the other muſt name him in every action for every duty due to the Teſtator, and his Releaſe ſhall be a good bar. If he do ſurvive he may adminiſter, and not the Executor of him that died: but otherwiſe if all had refuſed.

If one prove the Will in the name of both, he that doth not adminiſter ſhall not be charged.

If the Executor do once any action that is proper to an Executor, as to receive the Teſtators Debts, or to give Acquittance for the ſame, &c. he may not refuſe.

But other acts of Charity or Humanity he may do, as to diſpoſe of the Teſtators Goods about the Funeral, to feed his Cattel leſt they pe-

periſh, or to keep his Goods leſt they be ſtolen: theſe things may every one do without danger.

When Executors do bring an Act on it ſhall be in all their names, as well of them that do refuſe as of others.

But an Action muſt be brought againſt him that doth adminiſter onely, and he which firſt cometh ſhall firſt anſwer.

An Executor of an Executor is Executor to the firſt Teſtator, and ſhall have an Action of Debt, Accompt, &c. or of Treſpaſs, as of the Goods of the firſt Teſtator carried away, and Execution of Statutes and Recognizances, &c. 25 *Ed.* 5.

The Title and Intereſt of an Executor is by the Teſtament, and not by the Probate; but without ſhewing it they may releaſe the Probate.

The Juſtices will not allow them to ſue Actions.

The Executor ſhall have the Wardſhip of the Body and Lands of the Ward in Knights ſervice, but not in Soccage and Leaſes for years, and Rent-charges for years, Statutes, Recognizances, Bonds, Lands in Execution, Corn upon the ground, Gold, Silver, Plate, Jewels, Money, Debts, Cattel, and all other Goods and Chattels of the Teſtator, if they

be not deviſed, and may deviſe them: but if he do will *omnia bona & catalla ſua*, the Goods of the Teſtator paſs not, neither ſhall they be forfeited by the Executor.

An Executor is chargeable for all Duties of the Teſtator that are certain, but not for Treſpaſs, nor for Receipt for Rents, nor for occupation of Lands, as Bailiff or Guardian in Soccage, &c. for this is not any Duty certain ſo far as he ſhall have Aſſets. If the Executor do waſte the Goods of the Teſtator, he ſhall pay them of his own.

An Executor ſhall not be charged but with ſuch Goods as come to his hands; but if a ſtranger take them out of his poſſeſſion, they are Aſſets in his hands.

If an Executor take Goods of another mans amongſt the Goods of the Teſtator, he ſhall be excuſed of the taking in Treſpaſs.

Duties by matter of Record ſhall be ſatisfied before Duties by Specialty, and Duties by Specialty before Charges, and Legacies before other Duties.

An Executor may pay a Debt or Credit of ſome kind, depending the Writ, before notice of the Action, but not after notice or Iſſue joyned.

An Executor may pay Debts with his own money, and retain ſo much of the Teſta-

tors

tors Goods, but not Lands appointed to be ſold.

Any of theſe words, *debere*, *ſolvere*, *recipere*, borrowed, or any word that will prove a man a Debtor or to have the money, if it be by Bill will charge the Executor or Adminiſtrator, but not the Heir if he be not named.

CHAP. XLVIII.
ADMINISTRATORS.

AN Adminiſtrator is he to whom the Ordinary of the place, where the Inteſtate dwelt, committeth the Teſtators Goods, Chattels, Credits, Rights.

For whereſoever a man dieth inteſtate, either for that he was ſo negligent he made no Teſtament, or made ſuch an Executor as refuſed to prove it, or otherwiſe is of no force; the Ordinary may commit the Adminiſtration of his Goods to the Widow, or next of kin, or to both, which he pleaſeth, making requeſt, and revoke it again at his pleaſure.

The Ordinary may aſſign alſo a Tutor to the Inteſtates Children, to his Sons untill 12 years.

But ſo that it may be not a prejudice to him that is the Guardian: and after thoſe years he or ſhe may reſpectively chuſe their own Curators, and the Guardian may confirm them, if there be no good order taken by their Fathers Will.

As if ſuch a Tutor die, the Infant cannot have an Action of Account againſt his Executor.

The power and charge of an Adminiſtrator is equal in every point to the power and charge of an Executor. A man may have an Action of the Caſe againſt the Executor or Adminiſtrator upon the Aſſumption of the Teſtator, upon good conſideration, or Debt for Labourers wages, by the Statute.

And if a man make an Infant his Executor, the Ordinary may commit the Execution of the Will of the Tutor of the Child to the Childs behooſ, untill he be of the age of 17 years and if he be granted for longer time it is void.

An Adminiſtrator *durante minoritate* may do nothing to the prejudice of the Infant, he may not ſell any of the Goods of the deceaſed, unleſs it be upon neceſſity, as for the payment of Debts, or that they would periſh; nor let a Leaſe for a longer time then whileſt he is Executor.

An

An Infant upon the true payment of a Debt due to the Teſtator may make an Acquittance, and it ſhall be good.

For a Child may better his Eſtate, but not make it worſe.

CHAP. XLIX.
HEIR.

IF a man die ſeized of any Lands, and do not diſpoſe of them by his Will, they deſcend to his Heir, as aforeſaid.

And he ſhall have not onely the Glaſs and Wainſcot, but any other of ſuch like things affixed to the Freehold or Ground, as Tables dormant, Furnaces, Vats in the Brewhouſe or Dyehouſe, and the Box or Cheſt wherein the Evidences are, the Hawks and the Hounds, the Doves in the Dovehouſe, the Fiſh in the Pond, and the Deer in the Park, and ſuch like.

He ſhall be charged by Specialty for the Debts of his Anceſtor, ſo long as he hath Aſſets, if the Executor or Adminiſtrator have not ſufficient.

No Law nor Statute doth charge the Heir for the wrong or treſpaſs of his Father, but by expreſs words.

WIDOW.

The Widow ſhall have all her Apparel, her Bed, her Copher, her Chains, Borders, and Jewels, by the honourable Cuſtom of the Realm, except her Husband unkindly give any of them away. Or be it in Debt, that it cannot be paid without her Bed, &c. yet ſhe ſhall have her neceſſary Apparel.

What things are arbitrable, and what not.

Things and Actions Perſonal incertain are arbitrable, as Treſpaſs, taking away of a Ward, &c.

But things certain are not arbitrable, but when the Submiſſion is by Specialty, if they be not joyned with others incertain, as Debt with Treſpaſs.

Matters concerning the Commonwealth, ſome are not arbitrable, as Criminal Offences, Felonies and ſuch like, concerning the Crime.

In the Submiſſion three things are to be regarded.

Firſt, that it be made in Writing with the parties Covenants, or Bonds ſubſequent and ſufficient to bind them, their H[illegible] Exec[illegible]-

tors, and Aſſigns to perform the Award which ſhall be thereupon made, that both the Arbitrators may know their power, and the parties revoke not their power: for all is void that is not contained in the Submiſſion, or neceſſarily depending thereupon; and the Arbitrators labour is loſt, if they want means to compell the ſame to be executed.

Secondly, that there be power given to them ſufficient to do all things neceſſary for the ordering of the Controverſies, as to appoint times and places for their Meetings, to examine and decide the matters committed, and to bring their parties with their proofs, evidences, and witneſſes thither together before them, and to puniſh the place defective, and to expound and correct ſuch doubtful ſentences and queſtions, as may ariſe upon their Award, afterwards inconvenient to either parties, contrary to equity and the Arbitrators good meaning: which inconveniencies were not before by them ſeen at the making of the Award. *Temporis Filia Veritas.*

Thirdly, convenient time and place are to be limited for the yielding up their Award to the parties, or to their Aſſigns.

Six things to be regarded in an Arbitrament.

1. That it be made according to the very ſubmiſſion touching the things committed, and every other circumſtance.

2. That it be a final end of all Controverſies committed.

3. That it appoint either party to give or do unto the other ſomething beneficial, in appearance at leaſt.

4. That the performance be honeſt and poſſible.

5. That there be a mean how either part by the Law may attain unto that which is thereby awarded unto him.

6. That every party have a part of the Award delivered unto him.

For if it fail in any of theſe points, then is the whole Arbitrament void, and of none effect.

Examples thereof.

1. An Award that the parties ſhall obey the Arbitrament of *A M.* is void, for power may not be aſſigned.

An Award that any of the parties ſhall be bound or do any other act by the advice of the Arbitrator, is not good except it be in the

the ſubmiſſion ſo; but that the parties ſhall be bound, or make aſſurance by the advice of Counſel, is good.

2. An Award, that the parties ſhall be non-ſuited, is not good, becauſe it is no final end, for the party may begin again: that the party do withdraw his ſuit, is good.

If the Submiſſion be of divers things, and the Award onely of ſome of them, yet is the Award good for that part, as if the Submiſſion be of all Actions real and perſonal onely, or if it be onely *de poſſeſſione*.

3. If to ſubmit themſelves to the Arbitrament of all Treſpaſſes, and it is awarded that the one ſhall make amends to the other, and nothing is awarded for the others benefit; this award is void.

So it were if one of them ſhould go quite againſt the other, if the Submiſſion were not by Bond, for an Award muſt be final, obligatory, and ſatisfactory to both parties.

An Award, that either party ſhall releaſe to the other all Actions, and that becauſe the one hath treſpaſſed more then the other, he ſhall pay to the firſt, is good.

In Debt or Treſpaſs of Goods taken, that the Defendent ſhall retain part, and the Plaintiff to have the reſt, is not good.

4. An

4. An Award that one of the parties ſhall do an act to any ſtranger, the act is void if the parties be not bound.

Or if it be that he ſhall cauſe a ſtranger to enfeoff, or be bound to the other party, becauſe he hath no means to compel the ſtranger.

5. An Award is void if it be neither executed, nor any means by Law for the execution thereof: as if it ſhould be awarded, that one ſhould pay the other 10*l.* this is good, for he may recover the ſame by an Action of Debt. But if it were awarded, the one ſhould deliver to the other an Acre of Land, or do ſuch like act Executory, it were void if it be not delivered ſtreight way, or proviſion made by Bond or otherwiſe, to compell the payment thereof according to the Award, if the Submiſſion be not by Specialty.

6. Indentures of Arbitrament muſt be made of ſo many parts, that every perſon may have a part.

Arbitramentum æquum tribuit cuique ſuum.

An Award is commonly made by Laymen and ſhall be taken according to their intent, and not in ſo preciſe a form as Grants or Pleadings, but as Verdicts; yet the ſubſtance

ſtance of the matter ought to appear either by expreſs words, or by words equivalent, or by thoſe that do amount thereunto.

But it were good that Awards were drawn up by ſome that is skilful, for the avoiding of Controverſies, which otherwiſe may ariſe about the ſame.

AGREEMENT.

An Agreement is made between the parties themſelves: there muſt be a Satisfaction made to either party preſently, or remedy for the recompence, or elſe it is but an endeavour to agree.

Tender of Money without payment, or Agreement to pay Money at a day to come, is not any ſatisfaction before the day be come, and the Money be paid. It cannot be pleaded in Bar in an Action of Treſpaſs; for that as the other party hath no means to compell the other to pay the Money, ſo he may refuſe it at the day if he will. Otherwiſe in an Arbitrament: but Money paid at a day, before the Action is brought, is a good plea.

FINIS.

A TREATISE OF Particular Eſtates.

Written
By Sir John Doddridge, *Knight.*

London, Printed *Anno Dom.* 1677.

A TREATISE OF Particular Eſtates.

PARTICULAR ESTATES.

A Particular Eſtate is ſuch as is derived from a General Eſtate, by ſeparation of one from the other: as if a man ſeized in Fee Simple of Lands or Tenements, doth thereof cheat by Gift or Grant an Eſtate Tail, or by Demiſe, a Leaſe for Life, or any Eſtate for Years, theſe are in the Donee or Leſſee. Particular Eſtates in poſſeſſion derived and ſeparated from the Fee Simple in the De donor or Leſſor in Reverſion.

Alſo if Lands be demiſed to *A* for life, the Remainder to *B* and the Heirs of his body, the

the Remainder to *C* and his Heirs, the Estate for Life limited to *A*, the Estate Tail limited to *B*, are Particular Estates derived *ut supra*, and separated in Interest from the Fee Simple: the Remainder given to *C*, albeit the same Remainder doth depend upon those Particular Estates.

And of Particular Estates some are created by agreement between the Parties, as the Particular Estates before specified; and some by act of Law, as the Estate in Tail *apres possibility de issue extinct*, Estates by the Courtesie of *England*, Dower and Wardship: for albeit an Estate in Dower be not complete untill it be assigned, which oftentimes is done by assent and agreement between Parties; yet because the Party that so assigneth the same is compellable so to do by course of Law, that Estate also is said to be created by Law. Also an Estate at will is a kind of a Particular Estate, but yet not such as maketh any division of the Estate of the Lessor, is seized; for notwithstanding such an Estate the Lessor is seized of the Land in this Demesn as for Fee in Possession, and not in Reversion.

Also an Estate at will is not such Particular Estate whereupon a Remainder may depend. But of all the Estates before mentioned,

oned, many fruitful Rules and Obſervations are both generally and particularly ſo lively ſet forth by the ſaid Mr *Littleton*, in the 1,2,3,4,5,6,7 and 8 Chapters of his firſt Book, which is extant as well in *Engliſh* as in *French*, whereunto I refer you.

POSSESSION.

IT is further to be obſerved, that all Eſtates that have their being are in Poſſeſſion, Reverſion, Remainder, or in Right; but of all theſe Poſſeſſion is the principal. There are two degrees of the firſt and chiefeſt Poſſeſſion, *In Fait Poſſ'*, in Law or Deed, is ſuch as is before ſpoken of; and that is moſt proper to an Eſtate which is preſent and immediate: but yet ſuch Poſſeſſion of the immediate Eſtate, if it be not greater then a Term doth operate and enure to make the like Poſſeſſion of the Freehold or Reverſion. When a man is ſaid to have a Term, it is to be intended for years: when it is ſaid, a man to have the Fee of Lands, it is alſo to be intended a Fee Simple. Poſſeſſion is that Poſſeſſion which the Law it ſelf caſteth upon a man

man before any Entry or Pernancy of the profits: as if there be Father and Son, and the Father dieth ſeized of Lands in Fee, and the ſame to deſcend to the Son as his next Heir; in this caſe, before any Entry the ſame hath a Poſſeſſion in Law. So it is alſo of a Reverſion exportant, or a Remainder dependent upon particular eſtate or life: in which caſe if Tenant for Life die, he in Reverſion or Remainder, before his Entry, hath onely Poſſeſſion in Law. All manner of Poſſeſſions that are not Poſſeſſions *in fact*, are onely Poſſeſſions in Law: and it is to be obſerved then, if a man have a greater Eſtate in Lands then for years, the proper phraſe of Speech is, that he is thereof ſeized: but if it be for years onely, then he is thereof poſſeſſed. But yet nevertheleſs the Subſtantive *Poſſeſſion* is proper as well to the one as to the other.

REVERSION.

A Reverſion is properly an Eſtate which the Law reſerveth to the Donor, Grantor, or Leſſor, or ſuch like, which he doth dif-

diſpoſe parcel of his Eſtate, when he doth diſpoſe leſs Eſtate in Law then that whereof he was ſeized at the time of ſuch diſpoſition: as if a man ſeized of Lands in Fee doth give the ſame to another, and the Heirs of his body; or if he doth diſmiſs the ſame for life or years: in theſe caſes the ſame reſerveth the Reverſion thereof in Fee to the Donor or Leſſor, and his Heirs, becauſe he departed not with his whole Eſtate, but only with a particular Eſtate, which is leſs then his Eſtate in Fee: and ſuch Reverſion is ſaid to be Expectance upon the particular Eſtate. Alſo if he that is but Tenant for life for Land, and doth by Deed or Parol give the ſame to *S* in Tail, or for term of his life, which is a greater Eſtate then he may lawfully diſpoſe: in this caſe the Law reſerveth a Reverſion in Fee in ſuch Donor, though he were formerly but Tenant for life. And the reaſon thereof is, for that by ſuch unlawful diſpoſition, which by Deed or Word cannot be without Livery and Seizin, he doth by wrong pluck out the rightful Eſtate in Fee, from him that was thereof formerly ſeized in Reverſion or Remainder, and thereof by a priority of Time, gained in an inſtant, he was ſeized of a Fee Simple at the time of the execution thereof. But if a man ſeized

of Lands in Fee Simple, giveth the ſame to *A* and his Heirs, untill *B* do die without Heir of his body: in this caſe the Law reſerveth no Reverſion in the Donor, becauſe the Eſtate diſpoſed to *A* is a Fee Simple determinable, is in nature ſo great as the Eſtate which the Donor had at the time of ſuch Gift, and conſequently he departed thereby with all his Eſtate, and thereby an apparent difference is between a Gift made to *A* and the Heirs of his own body, and a Gift made to him and his Heirs untill *B* die without Heir of his body; for in the one caſe the Donor hath but an Eſtate Tail, and in the other a Fee Simple determinable hath a poſſibility of Reverter; for if *B* die without Heir of his body, then whether *A* be living or dead it ſhall revert to the Donor by ſuch poſſibility of Reverſion; for he that hath but ſuch a poſſibility hath no Eſtate, nor hath he power to give his poſſibility: but in the other caſe the Donor hath his Eſtate in Fee, and therefore he hath power to diſpoſe thereof at his pleaſure.

REMAINDER.

A Remainder is a remnant of an Eſtate diſpoſed of to another at the time of Creation of ſuch particular Eſtates whereupon it doth depend: as if *S* ſeized of Lands in Fee, demiſeth the ſame to *B* for life, the Remainder to *C* and the Heirs of his body, the Remainder to *D* and his Heirs: in this caſe *S* hath a particular Eſtate of the Leſſor, it is then alſo diſpoſed to *C* and *D ut ſupra*, whereby *B* hath an Eſtate for life, *C* a Remainder in Tail, and *D* a Remainder in Fee, depending in order upon the particular Eſtate in poſſeſſion. And in every Remainder five things are requiſite.

Firſt, that it depend upon ſome particular Eſtate.

Secondly, that it paſs out of the Grantor, Donor, or Leſſor, at the time of the Creation of the particular Eſtate whereon it muſt depend.

Thirdly, that it veſt during the particular Eſtate, or at the inſtant time of the determination thereof.

Fourthly, that when a particular Eſtate is created, there be a remnant of an Eſtate left to the Donor, to be given by way of Remainder.

Fifthly, that the perſon or body to whom the Remainder is limited, be either capable at the time of limitation thereof, or elſe *in potentia propinqua*, to be thereof capable during the particular Eſtate. If Lands be given to *J.S.* and his Heirs, the Remainder for default of ſuch Heir to *J.D* and his Heirs, that Remainder is void, becauſe it doth not depend upon any particular Eſtate. But if Lands be given to *J.D.* for the life of *J.D.* the Remainder to *J.B.* his Remainder is good, for it is not limited to depend upon a Fee Simple, but upon a particular Eſtate; which is onely called an Eſtate for life of *J.B.* deſcendable. If Lands be given to *B* for 11 years, if *C* do ſo long live, the Remainder after the death of *C* to *D* in Fee, this Remainder is void, for in this caſe it cannot paſs out of the Leſſor at the time of the Creation of the particular Eſtate for years: but if a Leaſe be made to *B* for life, the Remainder to the Heirs of *C*, who is then living; this Remainder is good, upon a contingency that if *C* die in the life of *B*, for that Remainder may well paſs out of the Leſſor preſently without *Abeyance*, without any inconveniency, becauſe onely the Inheritance ſeparated from the Freehold is an *Abeyance*. If Lands be given for life, with a Remainder

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to the right Heirs of *J.S.* and the Tenant for life dieth in the life of *J.S.* this Remainder is void, becauſe he died not veſt or ſettled, either during the particular Eſtate, or at the time of the determination thereof; for untill *J.S.* die, no perſon is thereof capable by the name of the Heir.

But if Lands be given to *J.S.* for term of his life, the Remainder to his right Heir, (in the ſingular number) and to the Heirs of his body, and after *J.S.* hath Iſſue a Son and dieth, that is a good Remainder, and the Son hath thereby an Eſtate Tail; for although it were unpoſſible that ſuch Remainder ſhould veſt during the particular Eſtate, becauſe during his life none could be his Heir, yet it may be and did veſt at the inſtant of his death, which was at the time of his determination of the particular Eſtate.

Concerning the fourth thing: If a man ſeized of Lands in Fee granteth out of the ſame a Rent, or Common to Paſture, or ſuch like thing, which before the Grant had no being, to *J.S.* for term of life, the Remainder to *J.D.* in Fee; this Remainder is void, becauſe of this thing granted there was no Remnant in the Grant to diſpoſe. And becauſe ſome heretofore have been of opinion, that albeit

the ſame cannot take effect, as another Grant of a new Rent or Common; *Ut res magis valeat quàm operat.*

This is a Rule in Law, That a thing enjoyned in a ſuperiour degree, ſhall not paſs under the name of a thing in any inferiour degree. And therefore if Lands be given unto two perſons, and unto the Heirs of one of them; unto the Husband and Wife, and Heir of the Husband; and he that hath the Eſtate of Inheritance granteth the Verſion of the ſame Land to another in Fee, ſuch Grant is void, becauſe the Grantor was thereof ſeized in a ſuperiour degree, *viz.* in Poſſeſſion, and not in Reverſion, as appeareth 22 *Ed.* 4. *fol.* 2. & 13 *Ed.* 3. *Brook* title of Grants 137.

And concerning the firſt and laſt thing, if a Leaſe be made of Land for term of life, the Remainder to the Maior and Commonalty of *D*, whereas there is no ſuch Corporation there in being, this Remainder is meerly void, albeit the Kings Majeſty by his Letters Patents do create ſuch Corporations during the particular Eſtate; for at the time of ſuch Grant the Remainder was void, becauſe then there was no ſuch Body Corporate thereof capable, or *potentiâ propinquâ* to be created and made capable thereof during the

the particular Eſtate, but the poſſibility thereof was then forein and probably intended. The like Law is, if a Remainder be limited to *J.* the Son of *T.S.* who had then no Son, and afterwards during the particular Eſtate a Son is born who is named *J*, yet this Remainder is void, for at the time of ſuch a Grant as was not to be probably intender, that *T.S.* ſhould have any Son of that name.

Alſo before the diſſolution of Abbies, if a Leaſe of Land were made to *J.S.* for life, the Remainder to one that then was a Monk, ſuch Remainder was void for the cauſe before alledged, albeit we were deraigned during the particular Eſtate. But if ſuch Remainder had been limited to the firſt begotten Son of *J. S.* it had been good, and ſhould accordingly have veſted in ſuch a Son afterwards born during the particular Eſtate.

RIGHTS.

A Right in Land is either clothed or naked: a Right clothed is when it is

wrapped in a Poſſeſſion, Reverſion, or Remainder. A naked Right, which is moſt commonly called a Right, is when the ſame is ſeparated from the Poſſeſſion or Remainder by Diſſeizin, Diſcontinuance, or the deveſting and ſeparating of the Poſſeſſion; as for example, if a Leaſe of Land be made for life to *J.S.* the Remainder to *J.D.* in Fee; in this caſe *J.S.* hath a Right clothed with a Remainder. But if a ſtranger that hath no Right or Title, doth in the ſame caſe enter into the Land by wrong, and put *J.S.* out of poſſeſſion, ſuch Entry by wrong is called a Diſſeizin; and therefore the Poſſeſſion is removed from the Right by reaſon thereof, the Diſſeizor is ſeized of the Land, and *J.D.* hath alſo the like naked clothing to the Remainder by ſuch Diſſeizin, is likewiſe deveſted and plucked out of him, cannot be reveſted in him during the Right of ſuch particular Eſtate, unleſs the poſſeſſion of ſuch particular Tenement be therewith reveſted, which muſt be by his Entry or Recovery by Action; and by ſuch Entry of the particular Tenement, or by his Recovery with Execution, the Remainder ſhall be inveſted as well as the particular Eſtate. And ſo there is a Right in Goods and Chattels, as well as Lands, Tenements, and Hereditaments, which

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is alſo clothed with a Poſſeſſion, ſo long as the rightful Proprietor hath the ſame; but if another doth take them from him by wrong, he now hath onely a naked Right to the ſame, which cannot be by him granted for the cauſe before alledged, but yet he may releaſe his Right there unto him that is thereof poſſeſſed, for the ſame reaſon that is before alledged. If a Releaſe of Right happen to be forfeited to the King, his Highneſs may grant the ſame by his Prerogative.

FINIS.

Certain Observations

CONCERNING

A DEED

OF

FEOFFMENT.

By T. H. *Gent.*

Cujus Posse est Velle.

London, Printed *Anno Dom.* 16--.

Certain Obſervations CONCERNING A DEED OF FEOFFMENT.

THE PREMISSES.

YOU may find in the Premiſſes, Firſt, the direct Nomination as well of the Feoffor as of the Feoffee, together with their places of Reſidence, Habitation, or Dwelling, and their Qualities, Eſtates, Additions, or Conditions. Secondly, the certain Expreſment and ſetting down of the Lands conveyed.

In Com' Norff.] *Comitatus dicitur à comitando*, of accompanying together; for generally at Aſſizes and Seſſions, thoſe of that County where ſuch Aſſizes and Seſſions are kept,

kept, uſe to be impanelled upon Juries, &c. for trial of Iſſue taken upon the fact betwixt party and party, and not thoſe in another County: and it is a common preſumption, that all perſons within their Counties take notice of ſuch things as are there publickly done, hereupon it happeneth, that where Lands, &c. lie in divers Counties, if they be conveyed by Feoffment, &c. Livery of Seizin muſt be made in every County, where any parcel of the Lands, &c. do lie. Otherwiſe it is of two parcels of Land in one and the ſame County. The name County is in underſtanding all one with Shire, which is ſo called from dividing, and either of them contain a certain portion of the Realm, which is parted into Counties or Shires for the better government thereof, and the more eaſie adminiſtration of Juſtice. Hence it cometh to paſs, that there is no parcel of this Kingdom which lieth not within the circuit or precinct of ſome County or Shire. There are reckoned in *England* 41 Counties or Shires, and in *Wales* 12. The County of *Norfolk* lying Northward is ſo called in oppoſition to *Suffolk*, which lieth towards the South, each one in reſpect of other gaineth his Name.

The Addition given to the Feoffor, you may perceive to be *Yeoman*, the Etymology

wher

whereof Mr. *Verſtegan* fetcheth from *Gemen*, a word anciently uſed amongſt the *Teutonicks*, which (as my Author ſaith) ſignifieth Vulgar or Common, and ſo the Letter *G* by corruption being turned into the Letter *Y*, we ſay and read *Yemen* or *Yeomen*. Others (how probably I dare not affirm) derive it by contraction from theſe two words, *viz*. *Young men*. Famous Mr. *Cambden* in his *Britannia*, after he hath reckoned up ſundry Degrees both of Nobility and Gentry, ranketh Yeomen in order next Gentlemen, naming them *Ingenuous*, in which ſenſe I apprehend *Yeomen* to be mentioned in a certain Statute made 16 *R.* 2. and in divers other Statutes. And although the Derivations of words be conveniently requir'd in the Law, and in every Liberal Science, (for *Ignoratis terminis ignoratur & ars*) yet to uſe the expreſſion of a Learned Divine, though ſpoken in another caſe, *Melius eſt dubitare de occultis quàm litigare de incertis*; ſo I muſt leave you to your own conceit concerning the original of the word *Yeoman*, having onely ſet you down one or two Opinions about it: however I muſt not forget what Sir *Thomas Smith* ſaith in his *Repub. Anglorum*, who very truly and properly calleth him a Yeoman, whom the Laws of *England* call *Legalem hominem*, that

that is to ſay, a Freeman born: and Mr *Lambert* in his *Eirenarcha* will excellently inform you who are, and who are not, *probi & legales homines.*

There is no ſpecial, but onely a general conſideration expreſſed in the Feoffment, neither of which (as I conceive) is in ſuch caſe abſolutely material, (though I may ſay formal) in regard of the notoriety of Deeds of Feoffment, &c. for Livery and Seizin (as ſhall be ſaid afterwards) is eſſentially required to make them perfect, which cannot be without the knowledge of others, beſides the parties themſelves; and a Feoffment doth thereby always import a free and willing conſent, otherwiſe peradventure it might have happened in a bargain and ſale, before 27 *H.*8. *cap.* 16. for the better illuſtration whereof take this Example: You and another man agree together, that you ſhall give him a certain Summe of money for a parcel of Land, and that he ſhall make you an Aſſurance of it: you pay him the money, but he maketh you no Aſſurance; in this caſe although the ſtate of the Land be ſtill in him, nevertheleſs the equity *in conſcientia boni viri* is with you, which equity is called the uſe, for which untill the 27 *H.*8. *cap.* 10. there was no remedy, (as ſaith Sir *Francis Bacon*)

and

and that very truly, except in the Court of Chancery, but the ſame Statute conjoyneth and annexeth the Land and the Uſe together, ſo you by this means for the conſideration have the Land it ſelf, without any further Conveyance, which is called a Bargain and Sale. But theſe grave Senators and worthy Stateſmen, who made the ſaid Act of the 27 *H.*8.*cap.* 10. for the transferring of Uſes into Poſſeſſion, wiſely foreſeeing that it would be very inconvenient and prejudicious, nay miſchievous, that mens Poſſeſſions ſhould upon ſuch a ſudden by the payment of a little money be tranſported from them, and perhaps in a Tavern or Alehouſe, and upon ſtrainable advantages) did diſcreetly provide in the ſame Parliament the ſaid Act of 27 *H.*8 *cap.*16. that Lands,&c. upon the payment of Money as aforeſaid, ſhould not paſs without a Deed indented and inrolled, as by the purport of the ſame Act may appear. Now ſeeing that before the ſaid Act of 27 *H.*8.*cap.* 16. Lands might paſs by bargain and ſale upon conſideration, without Deed indented and inrolled, and might not paſs without conſideration in ſuch manner, therefore I have heard Lawyers ſay, that conſideration is ſtill required in a bargain and ſale, though it be by Deed indented and inrolled,

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according to the ſame Statute. Sure I am, that regularly in a Deed of Feoffment it is not ſo as formerly is declared, and for the reaſon before expreſſed.

DEDISSE.

The word *Dedi* (by force of an Act of Parliament made 4 *Ed.* 1. *c.* 4. commonly called the Statute *De Bigamis*) implieth a Warranty to the Feoffee and his Heirs during the life of the Feoffor, whereupon *Fitzherbert* in his *Natura Brevium*, *fol.* 134. *h.* puts a Caſe to this effect, *viz.* If a man give Lands to one in Fee by Deed, by the words *dedi*, *conceſſi*, *&c.* hereby he ſhall be bound to warrant the Lands of the Feoffee by vertue of thoſe words, and if the Feoffee be impleaded, he ſhall have his Writ of *Warrant. Chart.* againſt the Feoffor, by reaſon of the words *dedi*, *conceſſi*, *&c.* but not againſt his Heir, for the Heir ſhall not be bound to Warranty, except the Father bind himſelf and his Heirs to Warranty, &c. by expreſs words in the Deed. I know ſome alledge, that becauſe as well the Statute as *Fitzherbert*, mentions not onely *dedi* but *conceſſi* alſo; therefore the one without the other implieth no Warranty: to whom it may be anſwered,

That

That the Statute it ſelf doth plainly prove againſt them, for the concluſion thereof hath theſe words, *Ipſe tamen feoffator in vita ſua ratione proprii doni ſui tenetur warrantizare*; and alſo the Teſtimony of Sir *Edward Coke* may be produced herein, who affirmeth that the Statute of *Bigamis*, *anno* 14 *Eliz.* in the Court of Common Pleas was expounded, as above is mentioned, namely that *dedi* did imply the Warranty: and Mr. *Perkins*, *cap.* 2. ſaith, that *dedi* in a Deed of Feoffment comprehendeth in it a Warranty againſt the Feoffor, and ſo doth not the word *conceſſi*.

CONCESSISSE.

I conceive the word *conceſſi* in Feoffments and Grants, (the implied Warranty excepted which *dedi* creates) to be of the ſame effect with *dedi*, and alſo with *confirmavi*, eſpecially in ſome caſes: to which purpoſe hear what *Littleton* ſpeaketh in his chapter of Diſcontinuance, Alſo (ſaith he) in ſome caſes this Verb *dedi*, or this Verb *conceſſi*, hath the ſame effect in ſubſtance, and ſhall enure to the ſame intent as the Verb *confirmavi*: as if I be diſſeized of a Carve of Land, and I make ſuch a Deed, *Sciant præſentes, &c. quòd dedi* to the Diſſeizor, &c. or *quòd conceſſi* to the ſaid

ſaid Diſſeizor the ſaid Carve, &c. and I deliver onely the Deed to him, without any Livery of Seizin of the Land, this is a good Confirmation, and as ſtrong in Law as if there had been in the Deed this Verb *confirmavi*, &c.

LIBERASSE.

The word *liberavi* I take to be of the ſame nature with *tradidi*, which I have often ſeen in Feoffments, whereof it is remarkable that *Hephron* the *Hittite*, when he aſſured the Field of *Machphelah* to *Abraham*, *Gen.* 32. 11. uſed the word *trado*, *agrum trado tibi*, that is, to *Abraham*, as S. *Hieroms* Tranſlation reads it.

FEOFFASSE.

This word cometh from *feudum* or *feodum*, which ſignifieth Fee, and is always, or for the moſt part uſed in Feoffments, as participating of the ſame nature.

CONFIRMASSE.

Concerning the word *confirmo* ſomewhat may be gathered from what hath been ſpo-

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ken about the Verb *conceſſiſſe*, yet I cannot forget how S. *Hierom* renders the expreſſment of the ſaid aſſurance of the ſaid Field of *Machphelah* to *Abraham* for a Poſſeſſion, in theſe words, *confirmatus eſt ager*, &c. *Gen.* 23.17. And now I come to the ſecond thing conſiderable in the premiſſes, namely the Feoffee, whoſe Addition is *Generoſo*.

GENEROSO.

Generoſus in Engliſh we read Gentleman, which ſome derive from the two French words *Gentil Home*, denoting ſuch a one as is made known by his Birth, Stock, and Race. Sir *Thomas Smith* calleth all thoſe Gentlemen that are above the degree of Yeomen: whence it may be concluded, that every Nobleman may be rightly termed a Gentleman, *ſed non vice verſâ*. Mr. *Cowel* conceiveth the reaſon of the Appellation to grow, becauſe they obſerve *Gentilitatem ſuam*, the Propagation of their Bloud, by giving or bearing of Arms, whereby they are differenced from others, and ſhew from what Family they are deſcended.

Ha-

Hæredi & Aſſignatis ſuis.

Some will have an Heir ſo called *quia hæret in hæreditate*, or *quia hæret in ſe hæreditas*: but to let ſuch conceits of witty invention paſs, it is certain that an Heir is ſo called from the Latine word *Hæres*.

Littleton in his chap. of Fee Simple ſaith, that theſe words [his Heirs] onely make the Eſtate of Inheritance in all Feoffments and Grants, &c. ſure then it is neceſſary for him that purchaſeth Lands, &c. in Fee Simple, to have the Feoffment run to himſelf *& hæredibus ſuis*; for if it run onely to himſelf *& aſſignatis ſuis*, although Livery and Seizin be made accordingly, and agreeable to the Deed, yet thereby onely an Eſtate for Life ſhall paſs, becauſe there wanteth words of Inheritance: and yet without Livery and Seizin in the caſe aforeſaid onely an Eſtate at Will ſhall paſs. And the reaſon why the Law is ſo ſtrict in this thing, (as in many others) for to preſcribe and appoint ſuch certain words to create and make an Eſtate of Inheritance is, (as Mr. *Plowden* ſaith in his Commentaries) for the eſchewing and avoiding of incertainty, the very fountain and ſpring from whence flowеth all manner of con-

confuſion and diſorder, which the Law utterly condemneth and abhorreth. What herein hath been ſaid is to be apprehended and underſtood of perſons in and according to their natural capacities. Yet perhaps an Eſtate of Inheritance may ſometimes paſs in a Deed of Feoffment by words, which may have reference and will relate to a certainty, for *Certum eſt quod certum reddi poteſt*: as for example, You enfeoff me and my Heirs of a certain piece of Land, to hold to me and my Heirs; &c. and I re-enfeoff you in as large, ample, and beneficial manner as you enfeoffed me: in this caſe (they ſay) you have a Fee Simple for the reaſon above expreſſed. So I come next to ſee what obſervations a Deed of Feoffment further affordeth.

Totam ill. pec. terræ cont.

Very neceſſary and convenient it is in Deeds of Feoffment, &c. to have the Lands, &c. thereby intended to be conveyed, certainly and expreſly to be ſet down, as well how much by eſtimation in quantity they do contain, as the quality of the ſame, whether Medow, Paſture, &c. being the *ſpecies* of Land, (which is the *genus*) and the place where, and manner how, they exiſt and lie, the

the better to ſhun and avoid doubt and ambiguity, which oftentimes ſtir up occaſions of unkind Suits and Contentions betwixt party and party. I know that Grammarians reading the word *peciam* will be ready to ſmile, and alledge that it cannot defend it ſelf *in bello grammaticali*, which I eaſily confeſs: but what then? what can they infer from hence? will they therefore utterly condemn the uſe thereof? methinks they ſhou'd not, but might give Lawyers leave to ſpeak in their own Dialect. But what if ſome take exceptions at this word, having occaſion to meet with it here, what would they do ſhould they read the Volums of the Law, where inſtead of *bellum* they ſhall find *guerra*, inſtead of *ſylva* they ſhall find *boſcus*, and *ſubboſcus*, with a thouſand the like? Surely (as ſaith *Erasmus*) they might commend or elſe condemn what they cou'd not underſtand, or haply underſtanding, might admire from whence ſuch uncouth words ſhould proceed: for their better information (if I thought they would thank me for my labour) I could tell them that becauſe the *Saxons*, *Danes*, and *Normans*, have all had ſome hand, or at leaſt a finger in our Law, therefore through the commixion of their ſeveral Languages, it comes to paſs that ſuch diſſh-

difficult terms and harſh Latine words (if I may ſo call them) are frequently obvious in the Books and Writings of the Law. And indeed I ſee no reaſon why any man ſhould object or cavil againſt the uſage of ſuch words, though they be not claſſical, ſeeing that as well in the Art of Logick as in Philoſophy there are found many words, which they call *vocabula artis*, Vocables of Art, which can no better ſtand according to the ſtrict Rules of Grammer, then the ancient words of Law, which cannot be changed without much inconvenience.

ACRA.

Acra, in Engliſh an Acre, ſeemeth to come from the Latin word *ager*. An Acre is taken to be a quantity of Land containing 40 Perches in length and 4 in bredth. Mr. *Crompton* in his Juriſdiction of Courts ſaith, that a Perch is in ſome places more, and in ſome places leſs, according to the different uſages in different Countries; and ſo then it muſt needs be of an Acre. But ordinarily or for the moſt part a Perch is accounted and eſteemed to contain 16 foot and an half in length. I take it to be the ſame with that meaſure which we call a Rod or Pole. A

Perch in Law Latin is called *pertica* or *perticata*. See the Ordinance made for meaſuring of Land, *anno* 34 *Ed.* 3. *in Pultons Abr. tit. Weights and Meaſures.*

QUAREN.

Quarentena in Engliſh a Furlong or Furrow long. *Firlingus* or *Firlingum* is the ſame. It hath been ſometimes accepted and taken for the eighth part of a mile, *anno* 35 *El.* 6. and I have read that *Firlingus* or *Ferlingus terræ continet* 32 *acras*. The Latins call it *Stadium*.

ABBUTT.

Abbutto is a Verb uſed by Lawyers to ſhew how the heads of Lands do lie, and upon what other Lands or places, denoting for the more certainty what Lands, &c. are adjacent about the Lands, &c. abbuttalled. And now that I may ſpeak once for all, in regard that Lawyers do uſe to abbreviate their words in writing, the reaſon is not (as ſome ignorantly have ſuppoſed) becauſe they cannot expreſs their terminations and endings, as they ought to be, but becauſe of the multiplicity of buſineſs which they are to go through,

through, oftentimes requiring very ſudden diſpatch. Yet I could wiſh that the cuſtom of ſhort writing *alicui ſcriptori non eſſet diſpendium*; but I fear me too many hereby take occaſion to be wilfully ignorant, which otherwiſe peradventure they would not do.

MILITIS.

Miles amongſt the Latins ſignifieth a Souldier, and in this place and the like *Miles* is to be Engliſhed a Knight, which (as Mr. *Cambden* noteth) is derived from the Saxon *Gnite* or *Cnight*. The Heralds will inform you of divers and ſundry Orders of Knights, if you pleaſe to conſult with them or their writings thereabouts. A Knight at this day is, and anciently hath been, reputed and taken for one, who for his valour and proweſs, or other Service for the good of the Commonwealth performed, hath by the Kings Majeſty, or his ſufficient Deputy on that behalf, been as it were liſted up on high, advanced above or ſeparated from the common ſort of Gentlemen. The *Romans* called Knights *Celeres*, and ſometimes *Equites*, from the performance of their Service upon Horſe back, and amongſt them there was an order of Gentility ſtyled *Ordo Equeſtris*, but diſtin-

guished from thoſe they called *Celeres*, as ſeveral *Roman* Hiſtories do plainly teſtifie. The Spaniards call them *Cavallero's*, the Frenchmen *Chevaliers*, and the Germans *Reiters*; all which Appellations evidently enough appear to proceed from the Horſe, which may be ſome teſtimony of the manner of the execution of their warlike Exerciſes. And ſurely it is a very commendable policy in States to dignifie well deſerving perſons with honourable Titles, that others may thereby be ſtirred up to enterprize and undertake Heroick Acts, and encouraged to the imitation of worthy and renowned Vertues.

ARMIG.

Armiger in Engliſh ſignifieth Eſquire, from the French *Eſcuier*; and perhaps an Eſquire may be called *Armiger quaſi arma gerens*, from his bearing of Arms. Ancient Writers and Chronologers make mention of ſome who are called *Armigeri*, whoſe Office was to carry the ſhield of ſome Nobleman. Mr. *Cambden* calls them *Scutiferi*, which ſeems to import as much and *homines ad arma dicti*. They are eſteemed and accounted of amongſt us next in Order to Knights.

CLERICI.

Clericus in Engli h we read Clerk. It hath with us two ſundry kinds of acceptations: in the firſt ſenſe it noteth ſuch a one who by his practice and courſe of life doth exerciſe his Pen in any the Kings Majeſties Courts, or elſewhere, making it his calling or profeſſion; hereupon you ſhall find in the current of Law mention made of divers Clerks, as for example, the Clerk of the Crown, the Clerk of Aſſize, the Clerk of the Warrants, the Clerk of the Market, the Clerk of the Peace, with many others. In the ſecond ſenſe it denoteth ſuch a one as belongeth to and is imployed about the Miniſtry of the Church, that being his Function; in which ſignification it is to be taken in this place, and in the like: for I for my part did never find Clerk in the firſt ſenſe appropriated to any as an addition ſimply. We have the uſe of the word *Clericus* from *Clerus* or *Clericatus*, ſignifying the Clergy, that is to ſay, the whole number of thoſe which properly ſo called, or rather ſtrictly, are *de Clero Domini, i. e. hæreditate ſive ſorte Domini*; for *Clerus* cometh from κλῆρος, a Greek word ſignifying the ſame with *ſors* in Latin, namely a Lot or Portion.

The HABENDUM.

The Office of the *Habendum* is to name again the Feoffee, and to limit the certainty of the Eſtate, and it may and doth ſome time qualifie the general implication of the Eſtate, which by conſtruction and intendment of Law paſſeth in the premiſſes: for an example whereof ſee *Bucklers* caſe in the ſecond Book of Sir *Edward Cokes* Reports, and *Throckmortons* caſe in *Plowdens* Commentaries. It is to be noted, that the premiſſes may be enlarged by the *Habendum*, but not abridged, as it plainly appeareth as well in the ſaid caſe of *Throckmorton*, as in *Worteſlies* caſe reported alſo by Mr. *Plowden*; and I have read (as my Collections tell me) that it is required of the *Habendum* to include the premiſſes. Moreover, the *Habendum* (as *W. N.* Eſq; hath it in the Treatiſe of the Grounds and Maxims of the Law) muſt not be repugnant to the premiſſes, for if it be it is void, and the Deed will take effect by the premiſſes, which is very worthy of obſervation.

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The TENENDUM.

The *Tenendum* before the Statute of *Quia emptores terrarum*, made 18 *Ed.* 1. was uſually *de Feoffatoribus & Haeredibus ſuis, & non de capitalibus dominis feodorum, &c. viz.* of the Feoffors and their Heirs, and not of the chief Lords of the Fee, &c. whereby there happned divers inconveniencies unto Lords, as the loſing of their Eſcheats or Forfeitures: and other Rights belonging to them by reaſon of their Seignories, which as the ſame Statute expreſſeth it, *durum & difficile videbatur, &c.* Whereupon it was granted, provided, and enacted, *Quòd de cætero liceat unicuique libero homini, terras ſuas ſeu tenementa ſua, ſeu partem inde ad voluntatem ſuam vendere, ita tamen quòd feoffatus teneat terram illam ſeu tenementum illud de capitali domino feodi illius, per eadem ſervitia & conſuetudines per quæ feoffator ſuus illa prius de eo tenuit. Que eſtate fuit fait* (as ſaith one) *pur l'advantage del Seignior.* Which Statute was made for the advantage of Lords, and indeed I eaſily believe it. Now it is evident from that which hath been declared out of the ſaid Statute, that at this day the *tenendum*, where the Fee Simple paſſeth, muſt be of the chief

Lords of the Fee, &c. for no man ſince the ſaid Statute could ever convey Lands in Fee to hold of himſelf, out of which Rule the King onely (I think) may be excepted: and 'tis not in ſilence to be paſſed over, that where Lands, &c are conveyed in Fee, though there be no *tenendum* at all mentioned, yet the Feoffee ſhall hold the ſame in ſuch manner as the Feoffor held before, *quia fortis eſt Legis operatio*, the Statute ſo determines.

The Clauſe of Warranty, Et ego & hæredes mei, &c. warrantizabimus, &c. defendemus, &c.

Warrantizo is a Verb uſed in the Law, and onely appropriated to make a Warranty. *Littleton* in his chapter of Warranty ſaith, *que eſt parol*, &c. that this word *warrantizo* maketh the Warranty, and is the cauſe of Warranty, and no other word in our Law; and the argument to prove his aſſertion is produced from the form and words uſed in a Fine, as if he ſhould ſay, Becauſe the word *defendo* is not contained in Fines to create a Warranty, but the word *warrantizo* onely; *ergo*, &c. which argument deduced and drawn *a majore ad minus* is very forcible, for the greater being enabled, needs muſt the leſſer

lesser be also enabled; *Omne majus in se continet quod minus est, & quod in majori non valet, nec valet in minori.* But certainly *Littleton* is to be understood onely of an express Warranty indeed, and of a Warranty annexed to Lands, for there may be and are other words which will extend and inure sufficiently to warrant Chattels, &c. and which will imply a Warranty in Law, as *dedi*, &c. and *excambium* (as I have heard say) implieth a Warranty in Law, which from *Glanvils Vel in excambium*, or *escambium datione*, *l.* 3. *c.* 1. may receive some confirmation. And *Littleton* in his chap. of Parceners teacheth, that Partition implieth a Warranty in Law, &c. And lest some may hear say that *defendemus* stands for a cypher, I will tell them what *Bract.* declareth of it speaking about a Warranty in Deed from the Feoffor and his heirs, whose words are these, *Per hoc autem quod dicit (scil Feoffator) defendemus, obligat se & hæredes suos ad defendendum si quis velit servitutem ponere rei datæ contra formam donationis, &c.* Lawyers in their books make mention of three kinds of Warranties, *viz.* Warranty Lineal, Warranty Collateral, and Warranty which commences by Disseizin. The first is when one by Deed bindeth both himself and his Heirs to Warranty, and after

Death this Warranty diſcendeth to and upon his Heir. The ſecond is in a tranſverſe or overthwart line, ſo that the party upon whom the Warranty diſcendeth, cannot convey the title which he hath in the Land, from him that was the maker of the Warranty. The third and laſt is, where a man unlawfully entereth upon the Freehold of another, thereof diſſeizing him, and conveyeth it with a Warranty; but this laſt cannot bar at all. Of theſe you may read plentiful and excellent matters and examples in *Littletons* Chapter of Warranty, and Sir *Ed. Coke* learnedly commenting upon him, to whom for further illuſtration hereof I refer you, as alſo to Mr. *Cowels* Interpretation of words in the title Waranty, who there remembreth divers things very worthy obſervation concerning it. Before I come to the fifth part of the Deed of Feoffment, give me leave to obſerve that a Warranty always deſcendeth to the Heir at the Common Law, and followeth the Eſtate (as the ſhadow of the ſubſtance) and whenſoever the Eſtate may, the Warranty may alſo be defeated, and every Warranty (as ſaith Sir *Ed. Coke*) which deſcends, doth deſcend to him that is Heir to him which made the Warranty by the Common Law.

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And moreover it is to be noted, as may be gathered from what hath been formerly ſaid, that an Heir ſhall not be bound to an expreſs Warranty, but when the Anceſtor was bound by the ſame Warranty, for if the Anceſtor were never bound, the Heir ſhall never be charged. And I remember I have read a Caſe in *Br. Abr.* 35 *H.* 8 *pl.* 26. to this purpoſe; *Si home dit en ſon garranty, Et ego tenementa prædicta cum pertinentiis præfato A.B. le I once warrantizabo, & ne dit, ego & hæredes mei il meſme garranter.a, mes ſon heir neſt tenus de garranter, pur ceo que* Heirs *ne ſont expreſſe en le garrante. B. garr.* 50. So will I forbear to ſpeak any further herein, being a very intricate and abſtruſe kind of Learning, requiring the Pen of a cunning and experienced Lawyer, and now I addreſs my ſelf to the fifth orderly or formal part of the Deed of Feoffment, the clauſe of *In cujus, &c.*

In cujus rei teſtimonium, &c.

This Clauſe is added as a Preparatory direction to the ſealing of the Deed: for ſealing is eſſentially required to the perfection thereof, becauſe it doth plainly ſhew the Feoffors conſent to, and approbation of what

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therein is contained, hereupon it will not be much devious or out of the way to make some mention of those Fashions, which in the manner of sealing and subscribing of Deeds, have been anciently used by our Ancestors. Some report that the *Saxons* in their time (before the Conquest) used to subscribe their Names to their Deeds, adding the Sign of the Cross, and setting down in the end the Names of certain Witnesses, without any kind of Sealing at all. But when the *Normans* came in, as men loving their own Country guises, they *per petit & petit* changed that custom, as also many others which they found here: and *Ingulphus*, who was made Abbot of *Creyland in anno Dom.* 1075. seemeth to confirm this opinion in these words, *Normanni cheirographorum confectionem cum crucibus aureis, & aliis signaculis sacris in Anglia firmari solitam, in cera impressa mutant.* Yet I have read of a sealed Charter in *England* before the Conquest, namely that of S *Ed* made to the Abby of *Westminster*: yet surely this doth not altogether repugn that which hath been formerly said, for I have seen in Mr. *Fabians* Chronicle, and elsewhere, that S. *Ed.* was educated in *Normandy*, and 'tis not unlikely but he might in some things incline to their fashions. The Frenchmen have a Proverb,

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In this clauſe the Style of the King at large, the Year of his Reign, and the Year of our Lord God, according to the computation and account of the Church of *England*, together with the day of the Moneth, are expreſſed. In former times Deeds were often made without Date, and that of purpoſe, that they might be alledged within the time of Preſcription, as Sir *Ed. Coke* in his ſaid Book of Inſtitutes (fol. *c.*) very worthily obſerves: and moreover, that the Date of Deeds was commonly added in the Reign of *Ed.* 2. and *Ed.* 3. and ſo ever ſince, to whom I refer you, who in the place laſt quoted hath very excellent matter and obſervations thereabouts. And thus to perform what I promiſed, I will ſpeak a word or two concerning Livery of Seizin, and ſo conclude.

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ing onely a Chattel and no Freehold. By Livery of Seizin, the Feoffor doth declare his willingness to part with that whereof he makes the Livery, and the Feoffees acceptance thereof is thereby made known and manifest. The Author of the New Terms of the Law saith, that it was invented as an open and notorious thing, by means whereof the Common People might have knowledge of the passing or alteration of Estates from man to man, that thereby they might be the better able to try in whom the right and possession of Lands and Tenements were if they should be impannelled on Juries, or otherwise have to do concerning the same. The usual and common manner in these days of delivering of Seizin I know to be so frequent, that of purpose I will omit it: but I pray you note with me before I make an end, that Livery of Seizin is of two sorts, viz. Livery of Seizin in Deed, and Livery of Seizin in Law, which is sometimes termed Livery of Seizin within the view. Livery of Seizin within the view cannot be good or effectual except the Feoffee doth enter into the Lands, &c. whereof the Livery of Seizin was made unto him in the life time of the Feoffor. And it is not to be passed over in silence, that a Livery in Law may sometimes be perfected

fected by an Entry in Law; as if a man maketh a Deed of Feoffment, and delivers Seizin within the view, the Feoffee dares not enter for fear of death, but claims the same, this shall vest the Freehold and Inheritance in him, to which effect you may see the opinions of certain Justices, 38 *Ass Pl.* 25. upon a Verdict of Assize in the County of *Devon*. And I conceive that this vesting of a new Estate in the said case in the Feoffee, making his claim where he dares not enter, stands upon the same reason, for *Contrariorum eadem est ratio*, that the revesting of an ancient Estate and Right in the Disseizee doth by such claim, whereof you may read plentifully in *Littleton* his chap. of Continual Claim. It is worth the observation, that no man can constitute another to receive Livery for him within the view, nor yet to deliver (as I have heard my Master say) for none can take by force or virtue of a Livery in Law, but he that taketh the Freehold himself, *& e contra*. Otherwise it is to take and give Livery of Seizin in Deed, for there as well the Feoffee in the one case may ordain and make his Attorney or Attorneys in his name and stead to take Livery, as the Feoffor in the other case to give Livery; *Concurrentibus iis quæ in jure requiruntur*. And now let

let Delivery of the Deed to be added to the Sealing thereof, and the ſtate executing of the Lands thereby conveyed, and then I preſume none will refuſe to allow that every thing hath been named, which is eſſentially required to the perfection of a bare Deed of Feoffment; and although I have mentioned the Delivery of the Deed in the laſt place, yet it is not the leaſt thing, or of the leaſt conſequence or moment, for after a Deed is ſealed, if it be not delivered *eſt a nul purpoſe*, it is to no purpoſe, and the Delivery muſt be by the party himſelf, or his ſufficient warrant. So it may be gathered from what hath been ſaid, that ſealing of Deeds without Delivery is nothing, and that Delivery without Sealing will make no Deed, but that both Sealing and Delivery muſt concur and meet together to make perfect Deeds.

I hope ſuch as are preſent at the Sealing and Delivering of Deeds of Feoffment, and the ſtate executing thereupon, will not forget to ſubſcribe their Names or Marks, as Witneſſes thereof, whereby they may the better be enabled to remember what therein hath been done, if peradventure there ſhall be occaſion to make uſe of them. And it is not amiſs here before I end to obſerve, that al-

although upon Deeds of Feoffment, &c. it was not usual before the later end of *H.*8. or thereabouts, to endorse or make mention upon such Deeds of the Sealing and Delivering of the Deeds, or state executing of the Lands, &c. intended thereby to be conveyed, (for I my self have many Deeds of Feoffment which do testifie as much; yet it is to be credibly supposed, and not without some manifest probability, that such persons whose Names are inserted after a certain clause in such Deeds, beginning with *his testibus*, were Eyewitnesses of all. Thus desiring you to take notice, that I have called the said six parts of the Feoffment Formal, because they are not absolutely of the essence of Deeds, &c. *manebo in hoc gyro*, I will here conclude, requesting all those to whom any sight hereof shall or may happen to come, friendly to admonish me of my failings herein, whereby they shall ever engage me thankfully.

F I N I S.